SUPREME COURT OF THE UNITED STATES.

No. 271.

MARCUS C. RIGGS, PLAINTIFF IN ERROR,

vs.

THE BOARD OF SUPERVISORS OF THE COUNTY OF JOHNSON.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF IOWA.

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1 UNITED STATES OF AMERICA:

The President of the United States of America to the judges of the circuit of the United States for the district of Iowa, greeting:

Because in the record and proceedings, and also in the rendition of the judgment, of a plea in said circuit court for said district, wherein the United States of America, on the relation of Marcus C. Riggs, is plaintiff and the Board of Supervisors of the county of Johnson is defendant, a manifest error hath happened, to the damage of said plaintiff, you are hereby commanded, if judgment be therein given, that then, under your seal, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday in December next, in said Supreme Court to be then and there held, that said record being inspected, the Supreme Court may cause the said errors to be corrected, which of right ought to be.

Witness Hon. Salmon P. Chase, Chief Justice of the Supreme Court of the United States, and the seal of said circuit court, this 16th of May, 1865.

Witness, W. G. WOODWARD,
Clerk of Circuit Court U. S. for Iowa, with the seal thereof affixed.

2 Received a copy of this writ of error this 16th of May, A. D. 1865. GEO. J. BOAL,
Att. for D'f't.

Filed 16 May, 1865.

WOODWARD, *Clerk.*

3 The return to this writ of error is as follows:

Be it remembered, that among the record and proceedings in the circuit court of the United States for the district of Iowa, the following, among other proceedings, were had:

Affidavit for mandamus.

4 In the circuit court of the United States for the district of Iowa.

THE PEOPLE OF THE UNITED STATES, *ex rel.* Marcus C. Riggs,
vs.
THE BOARD OF SUPERVISORS OF JOHNSON County.

Now comes Marcus C. Riggs and gives the court to be informed that he is a citizen of the State of New York, and that the Board of Supervisors of Johnson county, and State of Iowa, are citizens of the State of Iowa; that heretofore, to wit: on the first day of December, A. D. 1853, the county judge of Johnson county, in the State of Iowa, issued to the Lyons Iowa Central Railroad Company, or assigns, fifty bonds numbered from one to fifty, inclusive, for the sum of one thousand dollars each, payable on the first day of June, A. D. 1873, with

interest at the rate of seven per cent. per annum, payable on the first days of June and December of each successive year, upon the surrender of the proper interest warrant or coupon of each bond, said
5 coupon or interest warrant being payable to the holder thereof, each for the sum of thirty-five dollars; that he is the holder and owner of forty-seven of said bonds, and the unpaid coupons or interest warrants thereto annexed, the same being unpaid from the first day of June, A. D. 1854, (a copy of one of said bonds and coupons or interest warrants is hereto annexed and made a part thereof, which said bonds or coupons or interest warrants are exactly alike except the number thereof.) That it is recited in said bonds, and such is the fact, that they were issued in payment of five hundred shares of one hundred dollars each of the capital stock subscribed by said county of Johnson to the said Lyons Iowa Central Railroad Company; that there were fifty of said bonds of one thousand dollars each issued to the said railroad, and are secured by a special tax of three mills per cent. per annum for ten years, and thereafter of not more than one per cent. on the taxable property of the county till said bonds were paid, voted by the people of the county of Johnson in pursuance of an express provision of the code of Iowa authorizing such vote, and which, by the code, is a special lien on the en-
6 tire property of the county, and is in every respect equivalent to a mortgage of the same; that said bonds, and each of them, are the property of the relator, duly assigned to him, as well as the unpaid coupons or interest warrants thereto annexed, from the first day of June, A. D. 1854, and the instalments of interest or coupons ever since that time; that on the 12th day of May, A. D. 1864, he recovered judgment in the circuit court of the United States for the State of Iowa on some of said coupons or interest warrants annexed to said bonds for the sum of five thousand and one hundred eighty-nine dollars and twenty-six cents ($5,189 26) interest and costs, taxed at dollars, which will more fully appear by the records now on file in this court, to which reference is had, which judgment is in full force and unsatisfied, and on which execution has been issued and returned no property found; that said bonds were issued in pursuance of a vote of the people of Johnson county regularly held on the 17th day of May, 1853; that among other things voted to be done at said election was a provision that there should be levied a tax of three mills
7 on the dollar on the total valuation of the property of said county, for the first ten years thereafter, to pay the interest on said bonds, and after that a tax of not more than one per cent. but sufficient to pay the interest on said bonds and to pay the bonds themselves when due, the said tax to be levied till said bonds were paid; that the county judge of said county, being satisfied that the requirements of the code in relation thereto had been substantially complied with, and that a majority of the votes cast at said election were in favor of said proposition, did cause said proposition and result to be entered at large on the minute book of said county, and that thereby said vote had the force and effect of an act of the legislature of the State of Iowa; that said records are under the control of the defend-

ants; that it was the duty of the county judge of said county of Johnson, until the creation of the Board of Supervisors, which was done by an act of the legislature of the State of Iowa passed March 22d, 1860, and after their creation their
8 duty annually for the year A. D. 1854 and for each year thereafter for ten years, to levy a tax of three mills on the dollar of the total valuation of the property of the county of Johnson to pay the coupons or interest warrants annexed to said bonds and falling due for each of the years aforesaid, and after that to levy a tax of not more than one per cent. and not less than sufficient to pay the interest falling due for each of the ten years thereafter up to and including the year A. D. 1873, until the said bonds and the interest thereon are all paid; that fifty thousand dollars of the said bonds were issued bearing interest at the rate of seven per cent. per annum, payable semi-annually, making three thousand and five hundred dollars to be paid annually for interest; that said bonds fall due in twenty years from their date, to wit, in the year A. D. 1873; that by the said vote of the county of Johnson one tenth of the principal of the said bonds was to be raised by tax as aforesaid for each and every year after the first ten years after their issue, to wit, commencing with the year A. D. 1864; that one tenth of the principal
9 of said bonds is five thousand dollars; that the yearly tax to be raised for the payment of the interest on said bonds for the first ten years, was three thousand five hundred dollars; that for each year thereafter for ten years, the sum to be raised by tax, as aforesaid, will be eight thousand and five hundred dollars; that the value of the taxable property of the said county of Johnson, as returned by the assessors of the several townships thereof for each year since the year A. D. 1853, is not less than four nor more than six millions of dollars; that for the year A. D. 1858, nor for any year since then, has any such tax been levied, either by the county judge or by the Board of Supervisors of the said county of Johnson, but that duty has wholly been neglected; that it is the duty of the Board of Supervisors of each county in the State of Iowa to fix the amount to be raised by taxation, and the rate of tax in each county; that the said Board of Supervisors have been notified to levy said tax and have neglected to do so, though it is their duty under the aforesaid vote to levy and collect said tax without a de-
10 mand; that it is their duty to levy and collect forthwith a tax to pay said judgment, the payment of which has been demanded by the relator and refused by the said Board of Supervisors, a copy of which demand is hereto annexed and made a part thereof; that the relator is without other adequate remedy—wherefore he prays that a writ of mandamus may issue from this court to the Board of Supervisors of the county of Johnson in the State of Iowa, commanding them to levy, in addition to the usual taxes, an annual tax on the yearly valuation of said county for the year A. D. 1858, and each succeeding year to 1864, at a rate of three mills on the dollar on the valuation of said county for those years, and after that not exceeding one per cent. nor less than sufficient to pay the amount of said judg-

ment and cost and of the principal and interest falling due for each year on said bonds, and especially the interest warrants or coupons included in the aforesaid judgment, and to continue the same from year to year until the said bonds and coupons or interest warrants are fully paid, in payment for the coupons or interest war-
11 rants annexed to said bonds, now due and unpaid, and not included in the aforesaid judgment, and of such coupons or interest warrants as they shall become due, and for his cost in this behalf expended.

MARCUS C. RIGGS,
By J. GRANT, *his Att'y.*

UNITED STATES OF AMERICA,
State of Iowa, County of Johnson:

No. 22. $1,000

Seven per cent. loan, for subscription to the capital stock of the Lyons (Iowa) Central Railroad Company, $50,000.

Be it known that the county of Johnson, in the State of Iowa, owes to the Lyons Iowa Central Railroad Company one thousand dollars, which sum the judge of the county court of said county, having been duly authorized by a majority of the qualified voters of said county therefor, promise on behalf of said county to pay to the Lyons Iowa Central Railroad Company or its assigns, at the Bank of the Commonwealth, in the city of New York,
12 on the first day of June, A. D. 1873, and to pay interest thereon, at the rate of seven per centum per annum, on the first day of each December and of each June ensuing, the date hereof, at the said Bank of the Commonwealth, in the city of New York, upon the surrender of the annexed interest warrants, signed, by the order of the said judges of said county court of said county, by Samuel J. Hess, clerk of said county; and the said judge of said county court also agrees, in behalf of said county, to transfer to the holder of this obligation, at any time before the maturity of the same, if the holder shall elect to receive them, ten shares of one hundred dollars each of the capital stock of the said Lyons Iowa Central Railroad Company, in exchange for and in satisfaction of this obligation, upon the surrender of the same and the unpaid interest warrants.

This obligation is issued in part payment of a subscription of five hundred shares of one hundred dollars each of the capital stock of the said Lyons Iowa Central Railroad Company, made by
13 the said judge of the said county court of said county, on behalf of said county, by authority of an act of the general assembly of the State of Iowa, passed February 5th, 1851, and a vote of the qualified voters of said county taken in pursuance thereof.

In testimony whereof, we, the judge of said county court of said county of Johnson, in the State of Iowa, have hereunto set our

hands and affixed the seal of said county, this first day of December, A. D. 1853.

[SEAL.] T. H. LEE,
Judge of the County Court of Johnson County, of the State of Iowa.

Attest: S. J. HESS,
Clerk of the County.

Interest warrant No. 36 of bond No. 22.

The county of Johnson, in the State of Iowa, will pay to the holder hereof, at the Bank of the Commonwealth, in the city of New York, on the first day of June, A. D. 1873, thirty-five dollars for interest due on that day on bond No. 22, issued for subscription to the stock of the Lyons Iowa Central Railroad Company.

By order of the judge of the county court of the county of
14 Johnson, State of Iowa.

$35. S. J. HESS,
Clerk of the County of Johnson.

The other interest warrants attached to said bond No. 22 are the same as the above, except the numbers thereof and the time of payment.

Indorsed on said bond No. 22, and the others of said bonds is the following: "By order of the board of directors of the Lyons Iowa Central Railroad Company, said company by its vice president and secretary assign and transfer the within bond to Henry P. Adams or bearer; witness our hands and the common seal of said corporation, Dec. 1st, A. D. 1853.

[SEAL.] W. G. HANN, *Vice President.*

(Countersigned.)

JAMES McCOY, *Secretary.*

The foregoing is a true copy of bond No. 22 of the county of Johnson in the State of Iowa, issued to the stock of the Lyons Iowa Railroad Company.

Davenport, Iowa, 28th May, 1864.

15 To the Board of Supervisors, Johnson county:

GENTLEMEN: We hold about forty-seven of your bonds given to the Lyons Iowa Central railroad.

At the May term we recovered for Marcus C. Riggs a judgment for interest on these bonds to the amount of $5,189 26.

By the vote of Johnson county, a special tax of is required to be levied annually to pay principal and interest on these bonds; we are directed to demand of you to levy and collect this tax, as well for this as for past years, to pay said judgment and the principal and interest on said bonds.

Your ob't servants,

GRANT & SMITH, *Att'ys for owners.*

The foregoing is a true copy of the notice sent to the Board of Supervisors of Johnson county and State of Iowa, to which reference is had in the foregoing affidavit.

STATE OF IOWA, *Scott County:*

I, James Grant, declare on oath that I am the plaintiff's
16 attorney, who recovered the judgment in this cause; that I have examined the records of Johnson county referred to, seen many of the bonds referred to, and am more familiar with the facts than the relator; that I verily believe the facts therein stated are true.

JAMES GRANT.

Sworn to and subscribed by James Grant before me, this 12 April, 1865. Witness my hand and seal notarial, this day and year last above written.

[SEAL.]

S. T. SMITH,
Notary Public, Scott County, Iowa.

Endorsed: No. 275. Filed April 12, 1865.

W. G. WOODWARD, *Clerk.*

Circuit court of the United States for the district of Iowa.

The United States of America to the Board of Supervisors of Johnson county, Iowa, greeting:

17 Whereas it has been represented to the circuit court of the United States for the district of Iowa, at its October term, A. D. 1864, that heretofore, to wit, on the first day of December, A. D. 1853, the county judge of the county of Johnson, in the State of Iowa, issued to the Lyons Iowa Central Railroad Company, or assigns, fifty bonds, numbered from one to fifty inclusive, for the sum of one thousand dollars each, payable on the first day of June, A. D. 1873, with interest at the rate of seven per cent. per annum, payable on the first days of June and December of each successive year, upon the surrender of the proper coupon or interest warrant of each bond, said coupons or interest warrants being payable to the holder thereof, each for the sum of thirty-five dollars; that forty-seven of said bonds and unpaid coupons or interest warrants, from and since the first day of June, A. D. 1858, on the property of the relator, Marcus C. Riggs, a citizen of New York, and that the Board of Supervisors, the clerk and treasurer of Johnson county, Iowa, are citizens of the State of Iowa; and whereas it is further represented that the said re-
18 lator, Marcus C. Riggs, is the holder and owner of forty-seven of said bonds and the unpaid coupons or interest warrants thereto annexed, the same being unpaid from and including the first day of June, A. D. 1858.

And whereas it is further represented that it is recited in said bonds, and such is the fact, that they were issued in payment of five hundred shares of one hundred dollars each of the capital stock subscribed by said county of Johnson to the said Lyons Iowa Central Railroad Company; that there were fifty of said bonds of one thousand dollars each issued to the said railroad, and are secured by a special tax of three mills per cent., per annum for ten years, and thereafter of

not more than one *one* per cent., till said bonds were paid, voted by the people of the said county of Johnson, in pursuance of an express provision of the code of Iowa authorizing such vote, and which by the code is a special lien on the entire property of the county, and is in every respect equivalent to a mortgage of the same.

And whereas it is further represented that said bonds and
19 each of them, are the property of the said relator, Marcus C. Riggs, duly assigned to him, as well as the unpaid coupons or interest warrants thereto annexed, due on and since the first day of June, A. D. 1858.

And whereas it is further represented that on the 12th day of May, A. D. 1864, he, the said Marcus C. Riggs, recovered judgment on some of said coupons or interest warrants annexed to said bonds, for the sum of five thousand one hundred and eighty-nine dollars and twenty-six cents (5,189,26) interest and cost, taxed at dollars, which judgment is in full force and unsatisfied, and on which execution has been issued and returned, no property found.

And whereas it is further represented that said bonds were issued in pursuance of a vote of the people of Johnson county, regularly held on the 17th day of May, A. D. 1853; that among other things voted to be done at said election, was a provision that there should be levied a tax of three mills on the dollar, on the total valuation of the property of said county, for the first ten years thereafter, to pay the interest on said bonds, and after that a tax of not more
20 than one per cent. but sufficient to pay the interest on said bonds and to pay the bonds themselves when due, the said tax to be levied till said bonds were paid.

And whereas it is further represented that the county judge of said county, being satisfied that the requirements of the code in relation thereto had been substantially complied with, and that a majority of the votes cast at said election were in favor of said proposition, did cause said proposition and result to be entered at large on the minute book of said county, aud that thereby said vote had the force and effect of an act of the legislature of the State of Iowa.

And whereas it is further represented that said records are under the control of the defendants.

And whereas it is further represented that it was the duty of the county judge of said county of Johnson, until the creation of the Board of Supervisors, which was done by an act of the legislature of the State of Iowa passed March 22d, A. D. 1860, and after their creation their duty annually for the year A. D. 1854,
21 and for each year thereafter for ten years, to levy a tax of three mills on the dollar of the total valuation of the property of the county of Johnson, to pay the coupons or interest warrants annexed to said bonds and falling due for each of the years aforesaid, and after that to levy a tax of not more than one per cent. and not less than sufficient to pay the interest falling due for each of the ten years thereafter, up to and including the year A. D. 1873, until the said bonds and the interest thereon are all paid.

And whereas it has been further represented that fifty thousand

dollars of the said bonds were issued bearing interest at the rate of seven per cent. per annum, payable semi-annually, making three thousand and five hundred dollars to be paid annually for interest; that said bonds fall due in twenty years from their date, to wit, in the year A. D. 1873; that by the said vote of the said county of Johnson one tenth of the principal of the said bonds was to be raised by a tax as aforesaid for each and every year after the first ten years after their issue, to wit, commencing with the year A. D.
22 1864; that one tenth of the principal of said bonds is five thousand dollars; that the yearly tax to be raised for the payment of the interest on said bonds for the first ten years was three thousand five hundred dollars; that for each year thereafter, for ten years, the sum to be raised by tax as aforesaid will be eight thousand and five hundred dollars.

And whereas it has been further represented that the value of the taxable property of the said county of Johnson, as returned by the assessors of the several townships thereof for each year since the year A. D. 1853, is not less than four nor more than six millions of dollars.

And whereas it has been further represented that for the year A. D. 1858, nor for any year since then, has any such tax been levied, either by the county judge or by the Board of Supervisors of the said county of Johnson, but that duty has been wholly neglected.

And whereas it has been further represented that it is the duty of the Board of Supervisors of each county in the State of Iowa to fix the amount to be raised by taxation and the rate of tax in each county.

23 And whereas it has been further represented that the said Board of Supervisors have been notified to levy said tax and have neglected to do so, though it is their duty under the aforesaid vote to levy and collect said tax without a demand.

And whereas it has been further represented that it is their duty to levy and collect forthwith a tax to pay said judgment, the payment of which has been demanded by the relator and refused by the said Board of Supervisors.

And whereas, it has been further represented that the relator is without other adequate remedy.

Now, therefore, we being willing that due and speedy justice shall be done to the said Marcus C. Riggs in this behalf, as it is reasonable, do command you, the said Board of Supervisors of Johnson county, Iowa, that immediately after the receipt of this writ you do levy, in addition to the usual, an annual tax on the yearly valuation of said county for the year A. D. 1858, and each succeeding year to 1864, at *at* rate of three mills on the dollar on the valuation of the
24 said county for those years, and after that not exceeding one per cent. nor less than sufficient to pay the amount of said judgment and cost, and of the principal and interest falling due for each year on said bonds, and especially the interest warrants or coupons included in the aforesaid judgment, and to continue the same from year to year until the same bonds and coupons or interest war-

rants are fully paid, expended, or that you show cause to the contrary on or before the second day of the next term of our said court, to be held at Des Moines on the second Tuesday in May, 1865.

Witness the Hon. Salmon P. Chase, Chief Justice of the Supreme Court of the United States, this the 12th day of April, A. D. 1865, and the seal of said court hereto affixed.

[SEAL.] (Signed.) W. G. WOODWARD, *Clerk.*

Endorsed: No. 275. Dated April 12, '65.
W. G. WOODWARD, *Clerk.*

Service of the within writ is hereby accepted, and all further service of the same is hereby waived, and we hereby agree to appear to the same at the next term of the said court as fully as though the same had been regularly served.

(Signed.) GEO. J. BOAL,
Att'y, Johnson Co., Iowa.

April 15, 1865.

Return to alternative writ.

25 MARCUS C. RIGGS
vs.
THE BOARD OF SUPERVISORS OF JOHNSON COUNTY.

The Board of Supervisors of Johnson county, defendant in the cause above entitled, for return to the alternative ~~am't~~ issued therein, and for reason why a peremptory writ of mandamus should not issue against them, say that it is true that on the 1st day of December, A. D. 1853, the county judge of Johnson county issued fifty bonds to the Lyons Iowa Central Railroad Company, numbered from one to fifty inclusive, for $1,000 each, and payable on the 1st day of June, A. D. 1873, with 7 per cent. interest, payable as alleged.

As to whether relator is the holder or owner of any of said bonds or unpaid coupons, or interest warrants thereto annexed, or as to whether the said coupons or interest warrants are unpaid from June 1st, 1854, the said defendant, for want of any knowledge or information, cannot admit or deny, and calls for proofs. The recitals in said bonds show for themselves, as a copy of one of them is at-
26 tached to the affidavit of relator. As to whether said bonds or any of them are the property of relator or were assigned to him, or any of the unpaid coupons, this defendant, for want of any knowledge or information sufficient to form a belief, cannot admit or deny, and calls for proof. Said board admits the rendition of said judgment, and that said bonds were issued pursuant to what purported to be an election, held May 17, 1863, and the entry by the county judge on the minute book. The said board denies that any of said bonds, or any part thereof, should be raised by tax as alleged, or that it is their duty, or that they have refused to levy or collect said tax, or that it is their duty to levy or forthwith collect a tax to pay said judgment, or that relator is entitled to a peremptory writ of mandamus, and ask judgment accordingly.

2. And the said Board of Supervisors, for further return and reason why a peremptory writ should not issue against it as prayed, say that heretofore, to wit, about October 6, 1864, Charles B. Berryhill, for himself and others citizens of Johnson county, filed in the office of the clerk of the district court of Johnson county, Iowa, a
27 petition setting forth the intention of this board to levy, and of the treasurer to collect, a tax to pay the principal and interest on said bonds, and praying a writ of injunction to restrain the proposed action of said board and treasurer. That on the day and year last aforesaid said petition was presented to the county judge of said county for the allowance of a writ of injunction as prayed, which prayer was granted, and a writ ordered to be issued as prayed. That thereupon on said 6th day of October, A. D. 1864, a temporary writ of injunction from and under the seal of the clerk of said district court, which was duly served on this board and said treasurer. That afterwards, on the 3d day of November, A. D. 1864, the said cause of the said Charles H. Berryhill, for himself and other tax payers, against the said board and treasurer was heard in the said district court of Johnson county, Iowa, and determined; that said court in said cause having jurisdiction of the subject-matter and parties thereto, ordered, adjudged, and decreed that they, the said Board of Supervisors and their successors in office, and the said treasurer and his successors in office, are enjoined, the former (the said board)
28 from levying or proceeding to levy, and the latter (the said treasurer) from collecting or proceeding to collect, any tax to pay said interest or interest coupons, or coupons or principal of said bonds, or any part thereof, or to pay any judgment or judgments rendered thereon, or any part thereof. That said judgment is still in full force and effect, is not appealed from, and is binding on the defendants thereto. The defendant hereto attaches duly certified copies of the records in the said cause of Charles H. Berryhill against the said board and treasurer as a part of this return, referring thereto as "Exhibit A;" and the said Board of Supervisors state that it cannot, without the members thereof being guilty of contempt and liable to punishment by a court of competent jurisdiction, comply with the request of the relator, Marcus C. Riggs, to levy or collect the tax desired, or any part thereof.

Wherefore the said board says, that the prayer of relator should not be granted, and that judgment should be rendered against him for costs.

GEO. J. BOAL,
Att'y for Defendant.

29 STATE OF IOWA, *County of Johnson, ss:*

I, George J. Boal, on my oath do say that I am the attorney for the Board of Supervisors of said Johnson county; that I have heard read the within and foregoing, showing why a writ of mandamus should not issue against the Board of Supervisors of said county and the treasurer and clerk thereof; that I am fully acquainted with the matters stated in said showing; that said matters, where stated posi-

tively, are true, and, where stated on information and belief, they are true as I believe.

(Signed,) GEO. J. BOAL.

Subscribed in my presence and sworn to before me by George J. Boal, May 9th, A. D. 1865, as witness my hand and seal notarial on said day.

[SEAL.] SAM'L. H. FAIRALL,
Notary Public, Johnson County, Iowa.

STATE OF IOWA, *Johnson County, ss:*

Pleas before the district court of Iowa, at a term begun and
30 holden in the county of Johnson, on the day of October, 1864, before the Hon. C. H. Conklin, judge of the eighth judicial district of the State of Iowa.

CHARLES H. BERRYHILL
vs.
THE BOARD OF SUPERVISORS AND TREASURER of the county of Johnson, Iowa. } Equity.

Be it remembered that heretofore, to wit, on the 6th day of October, 1864, petition was filed in the office of the clerk of the district court in and for the county of Johnson, in the words and figures following, to wit:

Petition.

In the district court, Oct. term, A. D. 1864.

THE STATE OF IOWA, *Johnson county, ss:*

CHAS. H. BERRYHILL
vs.
THE BOARD OF SUPERVISORS AND TREASURER of Johnson county, Iowa. } In equity.

To the district court of Johnson county, Iowa:

The plaintiff, Chas. H. Berryhill, a citizen and tax payer of the county aforesaid, for himself and other citizens and tax payers of said county, who are very numerous, and all of whom it will be
31 and is impracticable to bring before the court, respectfully state:

1. That about the 1st of December, A. D. 1853, one F. H. Lee, claiming to act as the county judge of said county, to aid in the construction of the Lyons Iowa Central railroad, illegally issued to the Lyons Iowa Central Railroad Company fifty bonds, numbered from one to fifty (50) inclusive, in the sum of one thousand (1,000) dollars each, the principal to be paid on the 1st day of June, A. D. 1873, and seven (7) per cent. interest thereon per annum, semi-annually, on the 1st days of June and December thereafter in each year, at the Bank of the Commonwealth, in the city of New York, to he bearer of the interest coupons to the bonds attached.

2. That about the 1st day of September, A. D. 1853, one F. H. Lee, claiming to act as the county judge of said county, to aid in the construction of the Mississippi and Missouri Railroad, illegally issued and delivered fifty bonds, numbered from one to fifty, inclusive, in the sum of one thousand (1,000) each, the principal to be paid in ten years from the date thereof, with semi-annual interest
32 thereon at the rate of seven per cent. per annum, with interest coupons thereto attached. That the Board of Supervisors of said Johnson county threaten, and unless restrained will levy, and the treasurer of said county will, unless prevented, proceed to and will collect a tax to pay the interest on all of said bonds, and also the principal sums thereof; which threatened action will, if carried into effect, work an irreparable injury to plaintiff and all the other tax paying citizens of said county, and will lead to vexatious, continuous, numerous, and harassing litigation. That the interest on said bonds are evidenced by coupons thereto attached, but that plaintiff is unable to attach a copy of any of said bonds or coupons, as the same are not in his possession or under his control. That said bonds and every of them, and as well the coupons thereto attached, were issued without authority of law, and are null and void; and the proposed action of said board and treasurer is and would be without authority of law and illegal; that said bonds issued by the said F. H. Lee,
33 claiming to act as county judge as aforesaid, to said Lyons Iowa Central Railroad Company, were the only bonds ever issued to said company in the name or alleged behalf of said Johnson county. Wherefore plaintiff, for himself and other citizens and tax payers of said county, prays that the Board of Supervisors and the treasurer of said county be made defendants to this action; that they, the said Board of Supervisors, and their successors in office, and the treasurer of said county, be temporarily and perpetually enjoined, the former (the board) from levying or proceeding to levy, and the latter from collecting or proceeding to collect, any tax to pay the interest or principal of said bonds, or any part thereof, or any judgment or judgments rendered therefor, or for any part thereof; that a temporary writ of injunction issue restraining the said board from the doing of the act complained of, as also the said treasurer; that on a final hearing of said bill, the said injunction be made perpetual, and judgment for costs.

SAM. H. FAIRALL, *Att'y for Pl'ff.*

34 THE STATE OF IOWA, *Johnson County, ss:*

I, Chas. H. Berryhill, being duly sworn, on my oath depose and say that I am the plaintiff named in the above petition; that I have heard said pleading read and the allegations therein contained are true, as I believe.

CHAS. H. BERRYHILL.

Subscribed in my presence and sworn to before me by Charles H. Berryhill, this 6th day of October, A. D. 1864.

[L. S.] SAM. H. FAIRALL,
Notary Public, Johnson County, Iowa.

THE STATE OF IOWA, *County of Johnson, ss:*

The foregoing petition having been presented to the undersigned, judge of the county court, on the 6th day of *of* October, A. D. 1864, the clerk of the district court of said Johnson county is hereby directed to issue a writ of injunction as prayed, on the plaintiff filing a bond in the sum of two thousand dollars, conditioned as by statute in such case made and provided.

Z. C. LUSE,
Co. Judge, Johnson Co., Iowa.

Endorsed: Filed Oct. 6, '64.

T. J. COX, *Clerk,*
Per E. L. SHIRCLIFF, *Dep.*

35 *Exhibit B.*

And afterwards there was filed in the office of said clerk a notice in the words and figures following, to wit:

Original notice.

In district court, Oct. T., A. D. 1864.

STATE OF IOWA, *Johnson County, ss:*

CHARLES H. BERRYHILL
vs.
THE BOARD OF SUPERVISORS AND TREASURER of Johnson county.

To the Board of Supervisors of Johnson county, and the treasurer of Johnson county:

You are hereby notified that there is now on file in the office of the clerk of the dist. court of Johnson county, Iowa, a petition of Charles H. Berryhill, praying, for himself and other citizens and tax payers of Johnson county, that you be enjoined and restrained from proceeding to levy and collect any tax to pay any of the bonds or coupons thereto issued by the county judge of Johnson county to the Lyons Iowa Central Railroad Company, and for other relief. Now, unless you appear thereto and defend on or before noon of the second day of the next term of the district court of said county, to
36 commence on the 3d Monday of October, 1864, your default will be entered, and judgment and decree rendered thereon as prayed.

SAM. H. FAIRALL, *Att'y for Pl'ff.*

Service of this notice accepted this 6th day of Oct., 1864.

THOS. J. COX,
P'r E. T. SHIRCLIFF,
Dep. Clerk of the Board of Supervisors, Johnson Co., Iowa.
THOS. M. BANBURY,
Treasurer Johnson Co., Iowa.

And afterwards, to wit, on the 6th day of October, 1864, there was filed in the office of the clerk of the district court of said county of Johnson a bond in the words and figures following, to wit:

Bond.

In dist. c't, Oct. term, A. D. 1864.

THE STATE OF IOWA, *Johnson County, ss:*

CHARLES H. BERRYHILL,
vs.
THE BOARD OF SUPERVISORS of Johnson county, Treasurer of said county.

37 Know all men by these presents, I, Charles H. Berryhill, as principal, and ————, as sureties, are held and firmly bound unto the Board of Supervisors of Johnson county, Iowa, and to the treasurer thereof, and to their successors in office and to each of them, in the penal sum of two thousand dollars, to them and their successors jointly and severally, on the conditions following, viz:

Whereas on the 6th day of October, A. D. 1864, the above-named Charles H. Berryhill, as plaintiff, filed in the office of the clerk of the district court of Johnson county, Iowa, his petition, therein praying that a writ of injunction issue against the Board of Supervisors of said county and the treasurer thereof, for the reasons in said petition stated: Now if, upon the issuing of said writ and the levy and service thereof, the said Charles H. Berryhill will pay all damages which may be adjudged against the said plaintiff by reason of such injunction, then this bond is to be void, and otherwise to remain in full force and effect.

Witness our hands, this 6th day of October, A. D. 1864.

(Signed.) CHAS. H. BERRYHILL,
By SAM. H. FAIRALL, *Att'y.*
JOHN. R. VAN FLEET,
WILLIAM L. FIGG,
PETER ROBERTS,
——— McCRUM.

Approved and filed Oct. 6th, 1864.

T. L. COX, *Clerk,*
P'r E. T. SHIRCLIFF, *Dep.*

38 And afterwards there was filed in the office of the clerk of said district court the following writ of injunction, with the return endorsed thereon, in words and figures following, to wit:

In dist. c't, Oct term, 1864.

THE STATE OF IOWA, *Johnson County, ss:*

CHARLES H. BERRYHILL,
vs.
THE BOARD OF SUPERVISORS, and Treasurer of Johnson county, State of Iowa.

Whereas on the 6th day of October, A. D. 1864, Chas. H. Berryhill, for himself and other citizens and tax payers, as plaintiff, filed in

the office of the clerk of the district court of Johnson county, Iowa, his petition, in words and figures following, viz:

Petition in Equity.

In district court, Oct. term, A. D. 1864.

THE STATE OF IOWA, *Johnson County, ss:*

CHARLES H. BERRYHILL,
vs.
THE BOARD OF SUPERVISORS, and Treasurer of Johnson county, Iowa.

To the district court of Johnson county, Iowa:

The plaintiff, Chas. H. Berryhill, a citizen and tax payer of the county aforesaid, for himself and other citizens and tax payers of said county, who are very numerous, and all of whom it will be, and is, impracticable to bring before the court, respectfully states:

1. That about the 1st of December, A. D. 1853, one F. H. Lee, claiming to act as the county judge of said county, to aid in the construction of the Lyons Iowa Central Railroad, illegally issued to the Lyons Iowa Central Railroad Company fifty bonds, numbered from one to fifty inclusive, in the sum of one thousand (1000) dollars each, the principal to be paid on the 1st day of June, A. D. 1873, and seven per cent. interest thereon per annum, semi-annually, on the 1st day of June and December thereafter in each year, at the Bank of the Commonwealth, in the city of New York, to the bearer of the interest coupons to the bonds attached.

2. That about the 1st day of September, A. D. 1853, one F. H. Lee, claiming to act as the county judge of the said county, to aid in the construction of the Mississippi and Missouri railroad, illegally issued and delivered fifty bonds, numbered from one to fifty, inclusive, in the sum of one thousand (1000) dollars each, the principal to be paid in ten years from the date thereof, with semi-annual interest thereon at the rate of seven per cent. per annum, with interest coupons thereto attached.

3. That the Board of Supervisors of said Johnson county threaten to, and unless restrained will levy, and the treasurer of said county will, unless prevented, proceed to, and will, collect a tax to pay the interest on all of said bonds, and also the principal sums thereof; which threatened action will, if carried into effect, work an irreparable injury to plaintiff and all the other tax paying citizens of said county, and will lead to vexatious, continuous, numerous and harassing litigation. That the interest on said bonds are evidenced by coupons thereto attached, but that plaintiff is unable to attach a copy of any of said bonds or coupons, as the same are not in his possession or under his control; that said bonds, and every of them, and as well the coupons thereto attached, were issued without authority of law, and are null and void, and the proposed action of said board

and treasurer is and would be without authority of law and
41 illegal; that said bonds issued by the said F. H. Lee, claiming to act as county judge as aforesaid, to said Lyons Iowa Central Railroad Company were the only bonds ever issued to said company in the name or alleged behalf of said Johnson county: Wherefore plaintiff, for himself and others, citizens and tax payers of said county, prays that the Board of Supervisors and the treasurer of said Johnson county be made defendants to this petition; that they, the said Board of Supervisors and their successors in office, and the treasurer of said county, be temporarily and perpetually enjoined, the former (the board) from levying or proceeding to levy, and the latter from collecting or preceeding to collect, any tax to pay the interest or principal of said bonds, or any part thereof, or any judgment or judgments rendered therefor or any part thereof. That a temporary writ of injunction issue restraining the said board from the doing of the act threatened, as also the said treasurer; that on a final hearing of said bill, the said injunction be made perpetual, and judgment for costs.

SAM. H. FAIRALL, *Att'y for Pl'ff.*

42 THE STATE OF IOWA, *Johnson County, ss:*

I, Chas. H. Berryhill, of lawful age, being duly sworn, on my oath depose and say that I am the plaintiff named in the foregoing petition; that I have heard read said pleading, and that the allegations therein contained are true as I verily believe,

CHAS. H. BERRYHILL.

Subscribed in my presence and sworn to before me by Chas. H. Berryhill, this 6th day of October, 1864.

SAM. H. FAIRALL,
Notary Public, Johnson Co., Iowa.

And whereas, on presenting said petition to the county judge of Johnson county, the following order was endorsed by him thereon, viz:

THE STATE OF IOWA, *Johnson County, ss:*

The foregoing petition having been presented to the undersigned, judge of the county court of Johnson county, on the 6th day of October, A. D. 1864, the clerk of the district court of said Johnson county is hereby directed to issue a writ of injunction as prayed, on the plaintiff filing a bond in the sum of two thousand dollars, conditioned as by statute in such case made and provided.

Z. C. LUSE,
Co. Judge, Johnson Co., Iowa.

43 And whereas the judge of the county court of said Johnson county has ordered a writ of injunction to issue, on the filing of the necessary bond, and said bond having been filed, this, therefore, is in the name and by the authority of the State of Iowa to notify and inform you, the Board of Supervisors of said Johnson county,

and you, the said treasurer of said county, and your successors in office, that you, the said board, are enjoined that you desist from levying or proceeding to levy, and you, the said treasurer, are enjoined and that you desist from collecting or proceeding to collect any tax to pay the interest or principal of said bonds, or any part thereof, or any judgment or judgments rendered therefor, or any part thereof, until further ordered by this court.

In Witness whereof, I, Thomas J. Cox, clerk of the said district court, have hereunto set my hand and affixed the seal of said court, this 6th day of October, A. D. 1864.

THOMAS J. COX, *Clerk.*
Per E. L. SHIRCLIFF, *Dep.*

Rec'd this writ of injunction on the 7th day of October,
44 A. D. 1864, and served the same on the same day on Thomas M. Banbury, as treasurer of Johnson county, Iowa, by reading the same to him in Iowa City township, in said county, he waiving a copy of writ; also served said writ on the Board of Supervisors of Johnson county, Iowa, within named, by reading said writ to Thos. J. Cox, the clerk of said board, on the 8th day of October, in said Iowa City township, Johnson county, Iowa, and by reading same to James G. Carwin, the president of said Board of Supervisors, on the 14th day of October, 1864, in Pleasant Valley township, in said county, said clerk and president waiving copy of said writ.

JOHN WILSON, *Sheriff.*

Fees, $3 70.

Injunction.

CHARLES H. BERRYHILL
vs.
THE BOARD OF SUPERVISORS AND TREASURER of Johnson county, State of Iowa.

And now, on this day, to wit, November 3d, the same being yet of the October term of said court, the above-entitled cause came
45 on for final hearing upon the petition and proofs offered, and the court being fully advised in the premises, do find that the plaintiff, Charles H. Berryhill, is a citizen and tax payer of Johnson county; that he brings this suit for himself and other citizens, tax payers of said county; that about the first day of December, 1853, one F. H. Lee, claiming to act as the county judge of said county, to aid in the construction of the Lyons Iowa Central railroad, illegally issued to the said Lyons Iowa Central Railroad Company fifty bonds, numbering from one to fifty inclusive, in the sum of one thousand dollars each, the principal to be paid on the 1st day of June, 1873, and seven per cent. interest thereon per annum, semi-annually, on the first days of June and December thereafter in each year, at the Bank of the Commonwealth, in the city of New York, to the bearer of the interest coupons to the bonds attached; that about the 1st day of September, 1853, one F. H. Lee, claiming to act as the county

judge of said county, to aid in the construction of the Missis-
46 sippi and Missouri railroad, illegally issued and delivered fifty bonds, numbered from one to fifty inclusive, in the sum of one thousand dollars each, the principal to be paid in ten years from the date thereof, with semi-annual interest thereon at the rate of seven per cent. per annum, with interest coupons thereto attached; that the interest on said bonds, and each of them, was and is evidenced by coupons to said bonds attached at the time of the issuing thereof; that said bonds and coupons, and each of them, were and are illegal and absolutely and entirely null and void; that said Board of Supervisors is about to levy, and the treasurer to collect, a tax to pay the interest coupons, and to ultimately pay the principal of said bonds; that the said bonds and coupons were the only ones ever issued in the name of said county to aid in the construction either of the Lyons Iowa Central railroad or the said Mississippi and Missouri railroad: It is, therefore, ordered, adjudged and decreed by the court that they, the said Board of Supervisors and their suc-
47 cessors in office, and the said treasurer and his successors in office, be and they are hereby perpetually enjoined, the former (the said board) from levying or proceeding to levy, and the latter (the said treasurer) from collecting or proceeding to collect, any tax to pay said interest or interest coupons, or coupons, or principal of said bonds, or any part thereof, or to pay any judgment or judgments rendered thereon, or any part thereof, and that said plaintiff recover the costs herein expended, taxed at $——.

STATE OF IOWA. *Johnson county:*

I, John C. Culbertson, clerk of the district court of Johnson county aforesaid, do hereby certify that the above and foregoing is a full, true, and complete transcript of the papers and pleadings in this, and of the final entry of record in said cause, as full, true, and complete as the same remain on file and of record in my office.

Witness my hand, with the seal of said court hereto affixed,
48 this 3d of May, 1865.

[SEAL.] J. C. CULBERTSON, *Clerk D. C.*,
(Stamped.) By F. A. LEE, *Deputy.*

STATE OF IOWA. *Johnson County, ss:*

I, John C. Culbertson, clerk of the Board of Supervisors in and for Johnson county, do hereby certify that the following is a true and complete statement of the several levies made upon the taxable property in Johnson county, Iowa, for the year 1864, to wit:

For county purposes, 4 mills on the dollar; for State purposes, 2 mills on the dollar; for school purposes, 1 mill on the dollar; for relief purposes, 5 mills on the dollar; for bridge purposes, 1¾ mills on the dollar; for bounty purposes on the several townships named as follows, to wit: Newport, 3 mills on the dollar; Liberty, 7 mills on the dollar; Iowa City, 6 mills on the dollar; Hardin, 4 mills on the dollar; Washington, 7 mills on the dollar; Big Grove, 6 mills on the dollar; Gra-

ham, 6 mills on the dollar; Fremont, 5 mills on the dollar; Pleasant Valley, 1 mill on the dollar; Scott, 4 mills on the dollar; Cedar, 4½ mills on the dollar; Monroe, 5¼ mills on the dollar; Clear Creek, 5½ mills on the dollar; Penn, 4½ mills on the dollar; Jefferson, 6
49 mills on the dollar; Sharon, 6½ mills on the dollar; Madison, 4 mills on the dollar; Union, 3½ mills on the dollar; Oxford, 3¼ mills on the dollar.

Witness my hand and the seal of said Board of Supervisors hereto affixed this 3d day of May, 1865.

[SEAL.] JOHN C. CULBERTSON,
Clerk of B. S.,

(Stamped.) By F. H. LEE, *Deputy.*
Filed May 10, '65. WOODWARD, *Clerk.*

Demurrer.

U. S. circuit court for the district of Iowa.

THE UNITED STATES OF AMERICA, on the relation of Marcus C. Riggs,
vs.
THE BOARD OF SUPERVISORS OF THE COUNTY of Johnson.

The plaintiff, by Grant, his attorney, comes, and as to all that part of said answer or return beginning at the words, "and the said board for a further reason and return" down to
to the end thereof, being that part of said answer sets up an injunction against the defendants, by the district court of Johnson county demurs:

50 1st. Because the relator is no party to the proceedings in the State court.

2d. Because the whole proceedings in the State court were begun and the judgment rendered after the judgment was rendered in this court for the relator.

3. Because after the judgment was rendered in this court the State court had no jurisdiction, power, or authority, by any judgment to which the relator was no party, to prevent the relator from using the process of this court, by writ of mandamus, to collect his judgment, and whether he is a party to said proceedings or not.

4. Because a decree for an injunction rendered in the district court of Johnson county, wherein C. H. Berryhill was plaintiff and the said Board of Supervisors were defendants, to which the relator was not a party, and the proceedings which were begun after he had obtained judgment on the bonds referred to in said State court proceedings, is no bar to the relief sought.

GRANT *for Pl'ff.*

Filed May 12, 1865.

WOODWARD, *Clerk.*

51 In circuit court of United States, district of Iowa, May term, A. D. 1865.

THE UNITED STATES, *ex rel.* Marcus C. Riggs, *vs.* THE BOARD OF SUPERVISORS of Johnson county.

By agrement of the parties to the above entitled cause, it is stipulated that the return (to the alternative writ issued therein April 12th, 1865,) and the showing why a peremptory writ of mandamus should not issue, filed in this court May 10th, 1865, shall be treated the same as if under seal and as sworn to by defendant.

JAS. GRANT, *Pl'f's Atty.*
GEO. J. BOAL,
Att'y for the Board of Supervisors, Def't.

Filed May 15th, '65.

WOODWARD, *Clerk.*

52 Know all men by these presents that we, Marcus C. Riggs and Charles Whitaker, of Davenport, county of Scott, and State of Iowa, do acknowledge myself bound to the Board of Supervisors of the county of Johnson, in the State of Iowa, in the penal sum of two hundred dollars, to be levied, &c. Given, etc.

The condition of this obligation is this, that whereas the United States, on the relation of Marcus C. Riggs, have taken a writ of error from a decision of the circuit court of the United States for the district of Iowa to the Supreme Court of the United States, in a certain cause therein pending, wherein the U. S., *ex rel.* Marcus C. Riggs, is plaintiff, and the Board of Supervisors of Johnson county is defendant: Now, if said Riggs shall duly prosecute his writ of error and pay all damages and costs which may be adjudged against him, and abide by and perform all the orders and judgments of said Supreme Court of the United States, then this obligation to be void; otherwise in full force.

MARCUS C. RIGGS,
By GRANT, *Att'y.*
C. WHITAKER.

Filed 16th May, 1865.

WOODWARD, *Clerk.*

53 THE UNITED STATES—The relation of Marcus C. Riggs— *vs.* THE BOARD OF SUPERVISORS OF JOHNSON County. } 242.—Mandamus.

Now came the defendants, the Board of Supervisors of the county of Johnson, by Boal, their attorney, and files his answer or return to the alternative writ issued in this cause, and the relator, by James

Grant, his attorney, comes and files a demurrer to said return. The demurrer is submitted to the court, and upon argument it is adjudged that said demurrer be overruled and the defendant recover his costs on said demurrer, and the said plaintiff elected to abide by his demurrer, and thereupon judgment is rendered against the plaintiff, that he take nothing by his writ and for costs.

And the plaintiff prays for a writ of error to the Supreme Court of the United States, which is allowed upon the relator's filing a bond for costs in the sum of two hundred dollars, with Charles Whitaker as surety, which bond is approved by the court.

15 May, 1865.

54 I, W. G. Woodward, clerk of the United States circuit court for the district of Iowa, do hereby certify that the above and foregoing is a full, true, correct, and complete transcript and copy of all the papers filed and records made in my office in the case of the United States, on the relation of Marcus C. Riggs, *vs.* The Board of Supervisors of Johnson county, Iowa, as full, true, correct, and complete as the same appears on file and on record in my said office.

In testimony whereof, I have hereunto set my hand and the seal of said court this third day of June, A. D. 1865.

[SEAL.] W. G. WOODWARD,
Clerk Circuit Court aforesaid.

Fees for this transcript, $11.

55 United States of America to the Board of Supervisors of the county of Johnson in the State of Iowa, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the first Monday in December next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the district of Iowa, wherein the United States, on the relation of Marcus C. Riggs, is plaintiff, and you are defendant in error, to show cause, if any you have, why the judgment in said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness Hon. Samuel F. Miller, one of the justices of the Supreme Court of the United States, this the 16th day of May, A. D. 1865.

SAM. F. MILLER, *Judge.*

The defendant accepts service of the above citation this 16th day of May, A. D. 1865.

GEO. J. BOAL, *Att'y for Def't.*

56 Filed 16 May, 1865.

WOODWARD, *Clerk.*

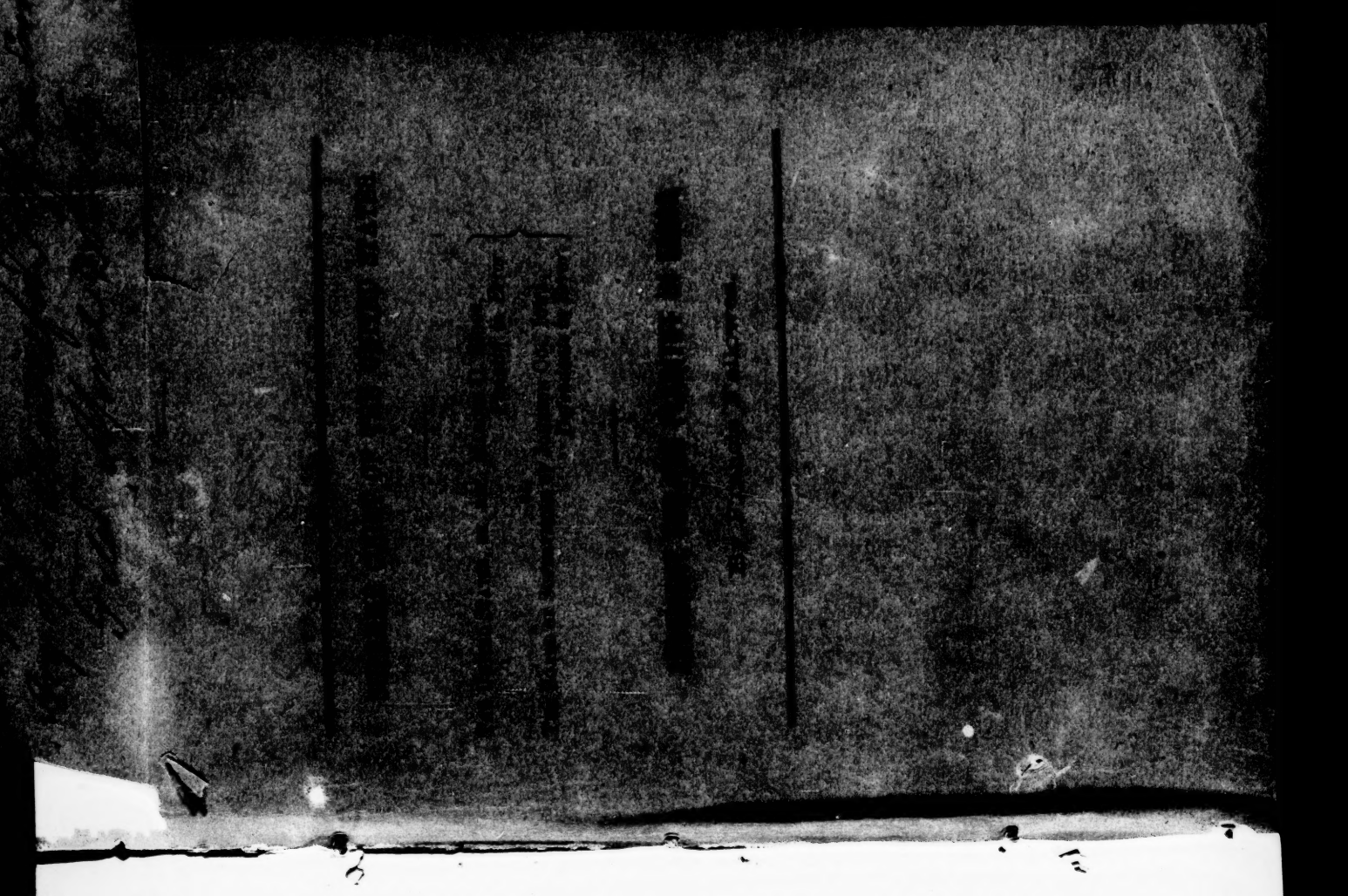
57 Sup. Court U. S.

UNITED STATES *ex. re.* Marcus C. Riggs,
plaintiff in error,
v.
THE BOARD OF SUPERVISORS OF JOHNSON
county, Iowa, defendants in error.

Now comes the relator and says there is error in the record of the above cause, in this, that the court below overruled his demurrer to the answer of the relator; wherefor he prays judgment, &c.

GRANT, *for Pl'f.*

Filed July 3, 1865.



SUPREME COURT OF THE UNITED STATES.

THE UNITED STATES, EX REL. MARCUS C. RIGGS,
Plaintiff in Error,
vs.
THE BOARD OF SUPERVISORS of Johnson County, Iowa,
Defendants in Error.

From the Circuit Court of the United States for the District of Iowa.

Statement of the Case.

Marcus C. Riggs, a citizen of the State of New York, recovered judgment in the Circuit Court of the United States for the District of Iowa, against Johnson County, in said District, for the interest on certain bonds issued by that county, execution was issued, returned unsatisfied, demand was made upon the supervisors of the county to lay a tax to satisfy the judgment, and upon their refusal, on application of the plaintiff, an alternative *mandamus* was issued by the Court rendering the judgment, to which the supervisors made return that they had been enjoined from laying the tax by a State Court, in a proceeding between the tax-payers and themselves. The plaintiff was no party to that proceeding, and the supervisors made no defence. The Circuit Court of the United States refused to issue a peremptory *mandamus*. At the time these bonds were issued, such bonds were held valid by the State Courts, but those Courts subsequently held otherwise. The statute law of Iowa, in such a case as this, requires the supervisors to lay a tax.

FURTHER ARGUMENT FOR THE PLAINTIFF IN ERROR.

Upon the decision of your Honors, in this case, depend not only obligations repudiated, to the amount of millions of dollars, but also the momentous question of the power and duty of the Courts of the United States to maintain their jurisdiction.

It is obvious, therefore, that the subject to be discussed is one of no ordinary importance.

Judgment for the interest on these bonds having been rendered in the court below, and a refusal to pay it, or to lay a tax to pay it, having been shown, I take it there is no doubt whatever that the court would issue the writ of *mandamus* prayed for, were it not for the injunction which has been issued by the State Court, forbidding the county officers to lay the tax.

The only question therefore is whether this injunction has such legal effect that the court can not legally issue this writ, or is bound, upon some extraneous ground, in the exercise of a legal discretion, to refuse it. If it has such effect, it must be because it is binding upon the plaintiff, either as to his right of action, or as to his remedy, or if not so binding, yet some reason addressed to the discretion of the court forbids it to proceed. It will not be pretended that it is so as to his right of action, for that right is established by the judgment of the court. That judgment remains unimpaired, the injunction notwithstanding. Has it any legal effect to deprive him of the remedy? If issued before the judgment, confessedly, it would have no effect to prevent the court from rendering the judgment, nor can it be claimed that it impairs such judgment after it is rendered. So far the jurisdiction of the Circuit Court is unaffected by it. But the injunction having been issued, does the jurisdiction to enforce the judgment cease, or has the court jurisdiction to proceed and make the judgment effective by issuing the only writ by which it can be enforced? If the jurisdiction ceases, and the court can no longer issue the writ, upon what principle is it? The plaintiff is no party to the injunction-suit and therefore not bound by it, unless that suit be a proceeding *in rem*, such that all the world are parties or privies to it, which will not be pretended. Neither will it be pretended that it is binding upon the court, or in any way affects or impairs its jurisdiction or its power to proceed and render its judgment effective by issuing this writ.

We must therefore come to this, that the plaintiff is not entitled to the writ *ex debito justitiæ* and that the court may issue it, or not issue it, according to its discretion, and further that the injunction is a fact which ought to induce the court, in the exercise of its discretion, to withhold the writ. The whole question is therefore narrowed to this, Is the writ of *mandamus* a discretion-

ary writ, or a writ of right, or, if it be discretionary, is the discretion an arbitrary discretion, or one regulated by law, and if the latter, then ought it to be controlled by the *ex parte* injunction and the writ refused?

I admit that it does not issue of course upon the rendition of the judgment, like a writ of execution. The plaintiff, in order to obtain it, must, in some form, make application to the court, and show the facts which entitle him to it. These facts are that he has a clear right, that he has no other specific legal remedy, and that this writ would be an effectual remedy. In this case, the right is established by the judgment; that he has no other remedy is admitted, and without this writ, the judgment is only so much dry ashes, and with this writ, the judgment can be enforced. These facts being shown, I maintain that the court has no discretion to withhold the writ. Call it, if you will, a prerogative writ, to distinguish it from the ordinary judicial writs, yet the court, in which this sovereign prerogative is vested, when the above facts are shown, is *bound* to exercise its prerogative, and the plaintiff is entitled to the writ *ex debito justitiæ*, and this, whether the writ be strictly a *writ of right* or one which issues upon *legal discretion*, which is *equivalent* to *right*. In the present case, the facts which entitle the plaintiff to the writ have all been shown. The judgment establishes the plaintiff's right. The writ of execution would be ineffectual. Taxation is the only mode to satisfy the judgment. The county officers have power to lay the tax. The law makes it their duty to lay it. They refuse to lay it. The plaintiff is, by law, entitled to have it laid, collected and applied to his judgment. Why does the court withhold the writ? The only reason alleged is that the county officers are enjoined in a suit to which the plaintiff is not a party, in a suit collusively instituted and prosecuted, between the tax-payers and the county officers. I say *collusively*, since these officers consent to the judgment, and the court below *assumes* that, although the State Court had no jurisdiction to issue such injunction, yet it will punish the county officers for doing what they would be required to do by a writ of *mandamus*. Therefore, in the exercise of its supposed discretion, the court refuses to exercise its prerogative. In other words, although the injunction is utterly void, as void as it would be if it were only the mandate of a private individual, yet the jurisdiction of this court of the United States, paramount

to every other, where the action of State authorities impairing the obligation of contracts is concerned, is practically annulled, and the repudiators, for such the judgment of the court pronounces them to be, depart in triumph, leaving the plaintiff, whom the supreme law of the land has invited to enter the national forum,—to invoke its aid in vain!

The turning point of the whole case is, that the injunction is totally void, void even as between the parties. No matter when it issued, whether before or after the suit in the Federal Court was commenced, nor in what stage of the proceedings, whether before or after judgment and execution. The State Court, not having the proper parties before it, has no jurisdiction to issue the injunction.* Could the State Court, or any other, not having the parties to the contract before it, act upon the question of the validity of the contract? Has it any jurisdiction so to act? In the present case, could it, upon the application of the bond-debtor, pronounce the bonds to be void, the holder not being a party? Or, on the application of the bond-holder, the bond-debtor not being a party, could it pronounce the bonds to be valid? This will not be pretended. Has it any more jurisdiction to deprive the holder of his remedy than it has to deprive him of his right? Apart from this injunction, the holder of the bonds is, confessedly, entitled to this only remedy, the writ of *mandamus*. I say *entitled* to it as matter of *right*, not as matter of *favor*,—*entitled* to it as *justice* to be *rendered*, not as *grace* to be *bestowed*.

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* NOTE.—"Jurisdiction" is defined to be "an authority or power which a man hath to do justice in causes of complaint brought before him."—*Jacob's Law Dict.*

To constitute this authority or power, it is obvious that the Court must have jurisdiction not only of the subject matter of the complaint, but also of the parties. It is also obvious that, in a case like this, the Court can have no jurisdiction of the subject matter without having, at the same time, jurisdiction of the parties, since the Court cannot act upon the subject matter to *do justice*, without having the parties before it.

It has been said, in argument, that the State Courts and the Federal Courts have a concurrent jurisdiction, and that the Court *first* obtaining jurisdiction, will retain it until a final adjudication. Therefore, it is urged, the validity of this injunction depends upon the question, which Court *first* obtained jurisdiction. The fallacy of the argument consists in assuming that the State Courts have, or ever can have, any jurisdiction at all to deprive suitors of their rights *ex parte*, or to deprive citizens of different States of their constitutional rights to relief in the National Courts.

The writ is no less a *writ of right* because it is a *prerogative* writ. The writ of Prohibition is a prerogative writ. So also is the great writ of personal liberty, the writ of *Habeas Corpus*. Yet they are none the less writs of right, secured to the citizen, the latter, at least, in England, by *Magna Charta*, and in these United States, by the fundamental law. The granting or refusing these writs may be revised by writ of error. This shows conclusively that they are not discretionary writs, but writs of right, or if discretionary, that the discretion is not arbitrary, but governed by fixed, legal, principles, which principles, applied to the facts, and combined with the facts, constitute the right, which may not be denied.

And this brings me to another point,—which is, whether this *ex parte* injunction ought to control the discretion of the Court, if such it be, and induce it to withold the writ? An affirmative answer to this question implies that there is a conflict of authority between the State Courts and the Federal Courts. I utterly deny that there is any such conflict. It is not a conflict between two Courts, each having jurisdiction over the matter in controversy, but an attempt on the part of a Court, having no jurisdiction, to arrest the proceedings of a Court having complete jurisdiction. Such an injunction is entitled to no more respect than if it were the simple vote of a popular assembly. But it is said, the supervisors will be in peril of contempt, even though the injunction be totally void, and this ought to influence the discretion of the Court to withold the writ. This argument *assumes* that the State Court, in the last extremity, will oppose its *unauthorized* mandate to the mandate of the Federal Court, whose jurisdiction upon this matter, is paramount to every other, and in the event of a conflict, must be maintained, if need be, by all the power of the nation. In the present case, the writ of *mandamus* is indispensable to the exercise of this jurisdiction. To refuse it is to yield up the jurisdiction to the unauthorized mandate of a State tribunal. If it be true, *as assumed*, that there will be peril, then this Court of the United States ought to protect the supervisors, whose duty it is to execute this writ. In executing it, they are, in so far, the officers of the Federal Court. Whoever opposes or resists the execution of the process of this Court, no matter in what shape he comes, or in what guise, whether that of State authority or any other, ought himself to be put in peril of con-

tempt. If this Court has indeed any discretion in the matter, it ought to exercise that discretion in vindicating and sustaining the supreme law of the land against all opposition, no matter whence it comes, from unauthorized judgments of State tribunals, or from whatever source. So policy requires, so duty commands.

But even if the State Court had complete jurisdiction both of the subject matter and of the parties, yet, even in a cause between citizens of the State of Iowa, such an injunction as this would be utterly void, and upon error would be so declared, since it would be repugnant to the Constitution of the United States. It has been repeatedly adjudged by this Court that any judgment of the State Courts against the validity of these bonds would be void, upon the ground that it would be a judgment impairing the obligation of contracts.* It has also been held by this Court that the rights of the holder to the remedy are a part of the contract, and that no State Legislature can repeal the law providing this specific mode for compelling the performance of the contract, to wit: the laying of a tax, since by the contract, the holder has a right to this law, and has a right to the enforcement of it, and to repeal it would be, in effect, to pass a law impairing the obligation of contracts. If then it be not competent for the State Sovereignty, in the exercise of its high, legislative functions, to impair this right, much less is it competent for a State Court, by its injunction, even if it had jurisdiction, both of the subject matter and the parties, to annul this law, and deny to the holder of these bonds his only remedy; much less still is it competent for such Court, in an *ex parte*, collusive, proceeding, to arrest the proceedings of the Courts of the United States, and virtually to annihilate their jurisdiction. Such an injunction, repugnant as it is to the Constitution of the United States, is utterly void, no matter by whom issued, and entitled to no respect from any person, nor in any Court, but on the contrary, public policy, the highest interest both of the individual citizen and of the nation, that *suprema salus*, which is also the *suprema lex*, demands of every citizen, and of every Court in the land, and especially of this august tribunal, the ultimate guardian of this high constitutional right, to brand every attempt

* Gelpcke *v.* Dubuque, Meyer *v.* Muscatine, 1 Wallace; Havemeyer *v.* Iowa County, Rogers *v.* Burlington, Thompson *v.* Lee County, 3 Wallace.

like this to impair the obligation of contracts, and to annihilate the National Sovereignty, in this its own appropriate sphere, to brand it, I say, with the mark of its utter condemnation.

The Constitution of the United States has established great national tribunals to which the citizens of different States may resort and litigate their rights. But this State tribunal, in Iowa, local in its character, local also, perhaps, in its opinions and its sympathies, says to these citizens: You may indeed enter the national forum, and proceed there to final judgment, but when you shall have reached that point, you shall proceed no further. That is the *ultima Thule* to the jurisdiction of that Court. Now we will arrest your further progress by our *ex parte*, void, unconstitutional, decree, and send you away with your barren, fruitless judgment, to bemoan your folly in trusting to the faith of promises heretofore declared by us to be of the most solemn obligation.

Not only so, but this Circuit Court of the United States, for the District of Iowa, proclaims to these citizens of other States, who have come into its precincts to demand their rights: True it is, you have the rights which you assert, this we have declared by our solemn judgment, but we are powerless to help you further, our jurisdiction is exhausted, and even the strong arms of the National Sovereignty must be folded in presence of this void, unconstitutional, but yet *terrific*, decree of this recreant tribunal of the State of Iowa!

Do I put the case too strongly? May it be said, no, our jurisdiction is not exhausted, our constitutional power remains in full vigor, it is competent for us to proceed and render our judgment effective, but in the exercise of our discretion, when we come to weigh the considerations for and against the issuing of this writ of *mandamus*, such weighty reasons* against it have been thrown into the scale as to outweigh our undoubted jurisdiction, to counterbalance the undoubted rights of this plaintiff, to bear down the great paramount demands of the Federal Constitution, and

* NOTE.—These weighty reasons are an *apprehension* that a void, unconstitutional, decree of a State Court may subject the County Supervisors to imprisonment, or that public policy requires the National Courts to yield to the State tribunals even where there is only an apparent conflict. There can indeed be no real conflict between the State and National tribunals when each keeps within its legal, appropriate, sphere.

to leave the Majesty of the National Sovereignty exhausted, prostrate, in the dust.

I will indulge in no such anticipations. Rather will I behold the National Courts vindicating their supremacy in their own constitutional, appropriate sphere. In this presence and in this place, illustrious for so many judgments resplendent with the light of pure, intellectual justice, *mens,—mens sine affectu*, I can entertain no fear for the result.

FRANCIS FELLOWES,
For the Plaintiff in Error.

SUPREME COURT OF THE UNITED STATES.

THE UNITED STATES, ON THE RELATION OF MARCUS C. RIGGS,

Plaintiff in Error,

VS.

THE BOARD OF SUPERVISORS OF JOHNSON COUNTY, IOWA,

Defendants in Error,

Error to the Circuit Court for Iowa.

ARGUMENT OF JOHN N. ROGERS,

FOR THE PLAINTIFF IN ERROR.

PUBLISHING HOUSE OF LUSE & GRIGGS.

SUPREME COURT OF THE UNITED STATES.

THE UNITED STATES EX REL. MARCUS C. RIGGS,
Plaintiff in Error,
vs.
THE BOARD OF SUPERVISORS OF JOHNSON CO., IOWA,
Defendants in Error.

Error to the Circuit Court for the District of Iowa.

Argument for the Plaintiff.

This suit is entirely similar in its character to Commissioners of Knox County v. Aspinwall, 24 How., 376. It is a proceeding by mandamus to compel the defendants to levy a special tax to pay a judgment, recovered by Riggs, the relator, against Johnson County, in the Circuit Court for Iowa, upon interest-coupons on bonds of the county, issued in payment of a subscription for railroad stock, as provided by the law, and vote of the people of the county, under which the bonds were issued.

By the Code of Iowa, of 1851, Secs. 114-124, (Revision of 1860, Secs. 250-260,) it is enacted as follows:

"Sec. 114. The County Judge may submit to the people of his county, at any regular election, or at a special one called for that purpose, the question whether money may be borrowed to aid in the erection of public buildings; whether the county *will construct, or aid to construct, any road* or bridge which may call for an extraordinary expenditure; * * * * * * and in all cases when an additional tax is laid in pursuance of a vote of the people of any county, for the special purpose of repaying borrowed money, or of constructing, or aiding to construct

any road or bridge, such special tax shall be paid in money and in no other manner."

Sec. 115. (Provides for publication of the proposition to be submitted to popular vote in newspapers and by posting up in public places, for 30 days prior to the election.)

"Sec. 116. When a question, so submitted, involves the borrowing or the expenditure of money, the proposition of the question must be accompanied by a provision to lay a tax for the payment thereof, in addition to the usual taxes, as directed in the following section, and no vote adopting the question proposed, will be of effect unless it adopt the tax also.

"Sec. 117. The rate of the tax shall in no case be more than one per cent. on the county valuation in one year. * * * When the object is to construct, or to aid in constructing, any road or bridge, the annual rate shall be not less than one mill on a dollar of the valuation, and any of the above taxes becoming delinquent shall draw the same interest with the ordinary taxes.

"Sec. 118. When it is supposed that the levy of one year will not pay the entire amount, the proposition and the vote must be to continue the proposed rate, from year to year, until the amount is paid.

"Sec. 119. The county judge, on being satisfied that the above requirements have been substantially complied with, and that a majority of the votes cast are in favor of the proposition submitted, shall cause the proposition and the result of the vote to be entered at large in the minute book, and a notice of its adoption to be published for the same time and in the same manner as above provided for publishing the preliminary notice; and from the time of entering the result of the vote in relation to borrowing or expending money, and from the completion of the notice of its adoption in the case of a local or police regulation, the vote and the entry thereof on the county records, *shall have the force and effect of an act of the general assembly.*

"Sec. 120. Propositions thus adopted, and local regulations thus established, may be rescinded in like manner and upon like notice, by a subsequent vote taken thereon, *but neither contracts made under them, nor the taxes appointed for carrying them into effect, can be rescinded.*

"Sec. 121. The judge shall submit the question of the adoption or rescission of such a measure when petitioned therefor by one-fourth of the voters of the county.

"Sec. 122. The record of the adoption or rescission of any such measure shall be presumptive evidence that all the proceedings, necessary to give the vote validity, have been regularly conducted.

"Sec. 124. Money so raised for such purposes is specially appropriated, and constitutes a fund distinct from all others in the hands of the troasurer, until the obligation assumed is discharged."

By a statute passed in 1860, (Revision of 1860, Secs. 302-326,) a county board of supervisors was created, and the control of the fiscal affairs of the county, including the levy of taxes, was transferred from the county judge to them.

The questions, whether the foregoing statutory provisions authorized a county, on compliance with the course of proceeding therein provided for, to aid in the construction of a *railroad*, by subscribing to its stock, and to issue bonds to raise money to pay such subscription; and whether, if so, the legislature could, under the State constitution, confer such power upon counties, were first decided in the affirmative by the Supreme Court of Iowa in *Dubuque County* v. *Dubuque & Pacific R. R. Co.*, 4 G. Greene's Reports, p. 1. This decision was followed by others to the same effect. (The State v. Bissell, 4 G. Greene, 328; Clapp v. Cedar County, 5 Iowa, 15; Ring v. Johnson County, 6 Iowa, 265; McMillan v. Boyles, *ib.*, 304; McMillan v. County Judge *et al.*, *ib.*, 391; Gaines v. Robb, 8 Iowa, 193; Whittaker v. County

of Johnson, 10 Iowa, 161.) Upon the strength of these decisions, bonds to an immense amount were issued by many of the counties in the State, in aid of the construction of railroads, among which were those involved in the present case. Subsequently to the issuing and negotiation of this vast amount of securities, the Supreme Court of Iowa, in the case of *The State, ex rel. the Burlington & Missouri R. R. Co.*, v. *Wapello County*, 13 Iowa, 390, (followed by Myers v. Johnson Co., 14 Iowa, 47; McMillan v. Boyles, *ib.*, 107; Rock v. Wallace, County Judge, *ib.*, 593,) overruled all their former decisions, and held that the above statute did not confer the power in question upon counties, and that the legislature could not constitutionally confer the power; *and that all the bonds issued by the counties and cities of the State, in aid of the construction of railroads, were void!* And in McMillan v. Boyles, 14 Iowa, 107, the Court (reviewing and reversing their former decision in the same case, reported 6 Iowa, 304, *ib.*, 391,) actually forever enjoined the county of Lee from levying any tax to pay the interest or principal of the very bonds issued by that county, and purchased on the strength of the former decision in the very same case, in 6 Iowa; and that, too, without requiring a single bondholder to be made a party to the suit—an example which the subordinate State Courts have not been slow to follow in respect to other counties, as will be seen in the sequel.

By these decisions the State Courts of Iowa have been effectually shut against all proceedings by the bondholders to enforce payment. *This* Court, however, in the cases of *Gelpcke* v. *The City of Dubuque*, 1 Wallace, 175, and *Meyer* v. *City of Muscatine*, *ib.*, 384, refused to follow these late decisions of the Iowa Court, and established, for the Federal Courts, the just and salutary principle, that the earlier Iowa decisions, affirming the power to issue the bonds, should be regarded as decisive of the question, as to all bonds issued while those decisions remained unreversed

Since these cases, the U. S. Circuit Court for Iowa has uniformly sustained the validity of the bonds, and numerous judgments have been recovered therein by the bondholders against various counties and cities of the State, on one of which the present proceeding is founded. The decision in this case is to settle the question, whether or not all these judgments, and all the bonds and coupons not yet in judgment, are, for any practical purpose, so much waste paper; that is, whether it is in the power of the Iowa State Courts not only to close their own doors against any remedy in behalf of the bondholders, but also to effectually defeat the collection of any judgments which they may recover on the bonds in the Federal Courts, by the simple and easy process of perpetually enjoining the officers of the several counties and cities from levying any taxes to pay the bonds or judgments recovered or to be recovered thereon (which amounts to enjoining them from *paying* such bonds and judgments), in suits collusively brought for that purpose by tax-payers against the county or city officers, without making a single bondholder a party, or giving them notice. Such is the character of the defense set up in the case at bar, and sustained by the judgment of the Court below.

The alternative mandamus alleges a vote of the people of the county, according to the statute above recited, in favor of the issuing of the bonds and of an annual tax to pay the interest and principal when due, the issuing of the bonds accordingly, and the recovery of a judgment on certain of them by the relator, in the Court below, for $5,189.26. The Board of Supervisors, in their return to the writ, set forth the record and proceedings of a suit in equity against them by certain tax-payers, in the District Court of Johnson County (the State Court of original jurisdiction), commenced *after* the recovery of the relator's judgment against the county, but *before* the commencement of this mandamus proceeding to enforce its payment, to enjoin the levy of

any tax to pay the interest or principal of the bonds, on the ground of the invalidity of the same, as held by the Supreme Court of Iowa; in which suit (to which the county officers were the sole defendants), a final decree, awarding a perpetual injunction against any tax to pay the bonds, *or any judgment recovered thereon*, was rendered by default, without any defense being interposed, in about *ten days* after the commencement of the suit! This return has been held by the Court below, on demurrer, to set forth a perfect bar to the issuing of a peremptory mandamus, which was accordingly denied. Upon this judgment the present writ of error is brought.

The importance of the case can hardly be over-stated. Millions of dollars depend upon it. The bondholders have no remedy worth pursuing, except the enforcement of the levy of the taxes provided for by the statute and the votes of the several counties under which the bonds were issued. The statute law of Iowa, on the one hand, exempts from execution the public buildings and other property of municipal corporations, necessary for carrying out the purposes of their organization (which embraces all the property such corporations possess); and on the other hand, provides that "the property of a private citizen can in no case be levied upon to pay the debt of a civil corporation." (Code of 1851, Sec. 1895; Revision of 1860, Sec. 3274.) And under the doctrine of the Circuit Court, which holds the injunction effectual as a bar to the mandamus, if obtained in a suit commenced before the application for the writ, though *after* the recovery of judgment on the bonds, there is nothing to prevent such counties and cities as have not already fortified themselves by an injunction, from doing so at any time. Several have already done so, and the others will probably not be slow to take the hint given them by the decision of the Circuit Court. The bondholders are absolutely powerless to hinder it.

Such is the magnitude of the pecuniary interests involved in the case. The questions to which it gives rise are of commensurate gravity and importance. They are, in substance, whether private pecuniary interests of immense amount can be conclusively adjudicated against those who hold them, without their being made parties, or having any opportunity to be heard; whether the Courts of a State can deprive the citizens of other States of their remedies upon claims against its corporate bodies in the Federal Courts, secured to them by the constitution and laws of the United States, and designed especially for just such cases as the present, by forbidding the corporate officers to pay the claims, or to take the steps necessary for payment; and whether, by such proceedings, the State Courts can virtually enjoin the Federal Courts from executing their own judgments, because their views of the law happen to differ from those entertained by the former. Graver questions than these can hardly occupy the attention of this Court, though it appears to us, that more difficult ones readily may and do.

We deny, in the first place, the efficacy of the injunction as a bar to the relief now sought, on the broad and simple ground, that neither the relator nor any of the bondholders were parties to the injunction suit, and that consequently they are not bound by the decree. Authorities without number might be cited in support of the general principle that judgments bind only parties and privies; but the rule is elementary, and hardly needs the citation of authorities in this Court. Says Marshall, C. J., in *The Mary*, 9 Cranch, 144: "It is a principle of natural justice, of universal obligation, that before the rights of an individual be bound by a judicial sentence, he should have notice, either express or implied, of the proceeding against him."

"The only exception" to this rule, (we quote from another argument in this cause,) "is in case of proceedings *in rem*, It will hardly be claimed that an injunction-suit is a proceeding *in*

rem, or that the right or power of county officers to levy a tax, is a '*res*' which can be proceeded against directly, and *condemned*, in the absence of the *persons* interested therein." This leads us to notice the nature of the law and the vote of the people founded thereon, for levying this tax; the character of the power they give, or the duty they impose, and the interest of the bondholders therein. This provision for a special tax to pay these bonds, is not a mere public regulation of the fiscal concerns of the county, in which no one has any legal interest other than as a citizen or tax-payer. It is for the special benefit and security of the bondholders. It constitutes a most vital *part of the contract* with them; one, without which, all the rest would be a hollow form of words, "*vox et praeterea nihil*." Vain would be the obligation to pay, illusory the solemn pledge of the "faith and credit" of the county, were it not for this substantial provision of means for carrying it into effect. This Court has said, in reference to a precisely similar provision in *Knox Co.* v. *Aspinwall*, 24 *How.*, 376, 384. "The act provides a special fund for the payment of these obligations, on the faith of which they were negotiated. *It is especially incorporated into the contract*, that this corporation shall assess a tax for the especial purpose of paying the interest on these bonds. If the commissioners neglect or refuse to perform this duty, the only remedy which the injured party can have for such refusal, is the writ of mandamus."

Suppose, after the issue of the bonds, the legislature should undertake to repeal the provision for levying the tax, or to authorize the people of the county by vote to rescind it. Would this Court hesitate for a moment to declare the act void as violating the obligation of the contract with the bondholders? It is, we submit, too plain for argument, that the obligation to levy this tax, is not a mere public duty, but a matter in the strictest sense of *private right*, of which the bondholders cannot be de-

prived by the mere force of any judicial determination to which they were not parties.

The decision of the Circuit Court was placed on the ground that where two Courts have concurrent jurisdiction, the decision of the one whose jurisdiction first attaches to a particular case, will be binding on the other. The rule is a familiar one; but the learned Court ignored the necessity of the jurisdiction having been acquired over the *parties*, as well as the subject matter, to render the judgment binding. It is believed that in all the cases where the rule relied on has been recognized and acted on, this element will be found to have existed. For examples, we refer to Smith v. McIver, 9 Wheaton, 532; Shelby v. Bacon, 10 How., 56, (68); Stearns v. Stearns, 16 Mass., 171; State v. Yarborough, 1 Hawks, 78; Thompson v. Hill, 3 Yerg., 167; Hall v. Dana, 2 Aiken, 381.

A want of jurisdiction over the parties to be affected by a judgment is as fatal as a want of jurisdiction over the subject-matter. Bissell v. Briggs, 9 Mass., 462; Hall v. Williams, 6 Pick., 232; Judah v. Stephenson, 10 Iowa, 493.

The case of *Bowen* v. *The Irish Presbyterian Congregation*, in the Superior Court of the City of New York, (6 Bosworth, 245,) we submit, is directly in point. It was there held in an action against the trustees of a religious corporation, to compel the specific performance of their sale of real estate, that it was no defense that in a suit subsequent to the contract, by members of the corporation against the trustees, an injunction had been issued restraining the corporation from conveying: the plaintiffs in the suit for specific performance not being parties to the injunction-suit; that the judgment in the latter did not bind them, and could not be given in evidence against them.

There is a strong similarity between a mandamus and a decree for specific performance. The one is the instrument by which a Court of law, the other that by which a Court of equity compels

the execution of a specific act. No principle is perceived upon which an injunction like the one in question could be held a defense to the one, but not to the other. It will be urged by defendant's counsel, that it is discretionary with the Court to grant or refuse a mandamus. Were this true, the discretion certainly could not be claimed to be wider than in the case of specific performance, which is pre-eminently a discretionary remedy, as all the cases recognize.

If this injunction-decree be a good defense against the relator in the present proceeding, it is not perceived why it would not have been also, had it then existed, a bar to his action against the county on the bonds, upon which this proceeding is founded. For "the estoppel of a judgment extends to the whole matter in dispute in the cause in which it is rendered; and therefore to *every point* decided between the parties in the course of the proceedings which led to the judgment. The judgment itself is sometimes said to operate as a bar, and the decision of a particular issue as an estoppel, but the conclusive effect of both is the same, and depends upon the same principle, that what has once been judicially determined, shall not again be made a subject of controversy."

"The estoppel of an issue on a particular point, or of the judgment itself as to the points which it determines, will be conclusive as to those points, in any subsequent proceeding whether founded on the same or a different cause of action." (2 Smith's Lead. Cases, Am., note, p. 574. Says Lord Ellenborough, C. J., in *Outram* v. *Morewood*, 3 East, 346, (a leading case on this subject,) "It is not the recovery, but *the matter alleged by the party, and upon which the recovery proceeds*, which creates the estoppel. The recovery of itself in an action of trespass, is only a bar to the future recovery of damages for the same injury; but the estoppel precludes parties from contending to the contrary of that point or matter of fact," (and his Lordship might have added

or matter of *law*;) "which having been once distinctly put in issue by them, has been on such issue joined, solemnly found against them."

Now the matters of fact and law alleged by the plaintiffs in the injunction-suit, and upon which the decree proceeded, were matters showing, or claimed to show the *invalidity of the bonds*. The record in that suit, which forms part of the return to the alternative mandamus, shows this. It is submitted, therefore, that if effectual against the bondholders for any purpose, it is effectual to defeat their recovery on the bonds. But this amounts to a "*reductio ad absurdum*." No one will contend for a moment that it has any such effect. Indeed, we do not understand it to be claimed by the counsel for defendants, that the injunction-decree "estops" the relator at all; but that, though not an "estoppel," it nevertheless, on some unexplained principle, operates to bar them of their remedy. What that principle is, we confess ourselves at a loss to conjecture.

Had the State Court first acquired jurisdiction over both subject-matter and parties to be affected, its judgment would be final; but if the Federal Court first acquired such jurisdiction in the suit on the bonds, it cannot be ousted thereof, either to prevent its rendering judgment or enforcing payment.

In another cause, similar to the present one, decided in the Circuit Court for the Northern District of Illinois, and now pending in error in this Court (*U. S., ex rel. Weber*, v. *Supervisors of Lee Co., Iowa*), in which the decree restraining the levy of the tax had been rendered in the Supreme Court of Iowa (being the one reported 14 Iowa, 107, heretofore alluded to), *before* the decisions of this Court in Gelpcke v. City of Dubuque and Meyer v. City of Muscatine, reported in 1 Wallace, the Circuit Court assigned as a reason for refusing a mandamus, that possibly the Iowa Court, in view of those decisions, might be induced to vacate or modify their injunction; but that no application appeared

to have been made to them to do so, and that a mandamus ought not to be granted until that had been done. This reason, if sound, does not apply to the present case, in which the injunction was granted not only after the decisions in this Court, but after the recovery of the relator's judgment in the Circuit Court, and with the obvious intention of defeating its collection. But we deny its soundness in the cases to which it *does* apply. The bondholders stand in the relation neither of parties nor privies to these injunctions. They therefore cannot appeal from them; nor, for the same reason, can they file bills of review. Indeed, no such proceeding as a bill of review, such as is contemplated by the old equity practice, seems to exist under the present law of Iowa. That State, following in the wake of many of its elder sisters, has thrown overboard the old common-law and equity systems of practice, and adopted a new code, which applies alike to both jurisdictions, and enacts at the outset (Revision of 1860, Sec. 2608), "The forms of all actions and suits heretofore existing are abolished; and hereafter there shall be but one form of action for the enforcement or protection of private rights and the redress or prevention of private wrongs, which shall be called a civil action." Chapter 141 is entitled, "Proceedings to reverse, vacate or modify judgments," and provides in detail in what cases and by what methods this may be done, which are evidently designed to be exclusive of all others. None of them will be found to embrace the case of these bondholders. We presume they cannot be required to invent new modes of proceeding for this special case, but are to pursue their remedies in the modes and forms which the law has provided for parties generally. Moreover, should they apply to the State Court to vacate the injunction, and be denied, it would be urged against them in the Federal Court, and with some plausibility, that they had thus voluntarily submitted themselves to the jurisdiction of the State Court, and were bound by its decision. They cannot thus be

indirectly deprived of their remedy, as citizens of other States, in the Federal Court. Besides, why should they be required to go through the idle form of this application to the State Courts? It is but too evident from the facts disclosed by this record, and others, that those Courts, so far from intending to yield to the decisions of this Court, are not only (in the language of the dissenting opinion in Gelpcke v. City of Dubuque, 1 Wall., 209) "adhering to their own opinion with more tenacity," but also "examining if the law does not afford them the means, *in all cases*, of enforcing their own construction of their own constitution and their own statutes;" and with considerable success, if the decision of the Circuit Court is sustainable. Is it consistent with the dignity or self-respect of the Courts of the United States, that they should, in effect, appear as humble suppliants at the bar of State tribunals, requesting that the latter will be graciously pleased to allow them to execute their own judgments? Such, it is submitted, is the humiliating attitude in which they are placed, if the views of the Circuit Court for Illinois are sanctioned by this Court.

It is held by respectable authority, that State Courts will not assist the execution of judgments of the Federal Courts. (3 Paige Ch. 207.) For the Federal Court now to decide that it may not fully execute its own judgments, is to decide that they may not be executed at all, and thus deny its suitors "the fruit and end of their suit, and the life of the law;" a conclusion involving almost a judicial *felo de se*, and which this Court has emphatically denied, and asserted that the Circuit Court, having proper jurisdiction to compel the satisfaction of its own judgments, cannot be justified in turning its suitors over to another tribunal to obtain justice. (Comrs. of Knox Co. v. Aspinwall, 24 How., p. 385.) Nor will the Federal Court, when seeking to enforce its judgments, permit its process to be governed or con-

trolled by the State law or authority. (Bank of U. S. v. Halstead, 10 Wheat., 64.)

Hence (in the second place) we deny the efficacy of this injunction-decree, proceeding as it does upon the groundof the invalidity of the bonds, and that alone, to prevent the Courts of the United States from carrying into effect their own judgments upon the bonds in favor of the bondholders, affirming the validity of the securities, and rendered in causes where they possessed jurisdiction both of the subject matter and the parties, by the only mode in which they *can* be enforced, viz: compelling the levy of a tax to pay them.

This leads us to inquire into the nature of the jurisdiction of the Federal Courts in mandamus, and of the purposes for which its exercise is invoked in the present case.

The power of the Circuit Court to issue a mandamus is derived from the 14th Section of the Judiciary Act of 1789, which provides, "That all the before-mentioned Courts of the United States shall have power to issue writs of *scire facias, habeas corpus,* and all other writs not specially provided for by statute, *which may be necessary for the exercise of their respective jurisdictions,* and agreeable to the principles and usages of law."

It appears to be entirely settled by decisions of this Court, that under this statute the Circuit Court possesses no general jurisdiction to issue a mandamus, whenever the case is intrinsically such as to render it a proper remedy, and the parties are citizens of different States; but that it is confined to cases where the writ is necessary for the exercise or enforcement of a jurisdiction *otherwise* vested in the Court, or acquired thereby *previous* to the issuing of the mandamus. (M'Intyre v. Wood, 7 Cranch, 504; M'Clung v. Silliman, 6 Wheat., 598; opinion of Johnson J. Knox Co. v. Aspinwall, 24 How., 376). Thus, the Circuit Court could not afford to these bondholders the remedy of a mandamus in the first instance, to compel the levy of a tax o pay the inter-

est on the bonds, merely *as* interest, and without the prior recovery of a judgment therefor; though the State Courts could, and in like cases *have* afforded such a remedy. (Maddox v. Graham, 2 Metcalf, (Ky.) 56; Comth. v. Pittsburg, 34 Penn. St., 496; Comth. v. Commissioners, &c. 37 Penn. St., 277.) In Knox Co. v. Aspinwall, 24 How., 376, it was strenuously argued by the counsel for the county, that the 14th section of the judiciary act did not authorize the Circuit Court to issue a mandamus to compel the levy of a tax to pay a judgment, in a case precisely like the present. It was held, however, to be authorized, and Mr. Justice Grier, in delivering the opinion of the Court, says, (page 384,) "The jurisdiction of these Courts is, by the constitution, extended to 'controversies between citizens of different States.' Congress has authority to make all laws which shall be necessary and proper for carrying this jurisdiction into effect. The jurisdiction of the Court to give the judgment in this case is not disputed; nor can it be denied, that by the constitution, Congress has the power to make laws necessary for carrying into execution all its judgments. (See Wayman v. Southard, 10 Wheat. 22.) Has it done so?"

The learned judge then quotes the 14th section of the judiciary act, *ut supra*, and proceeds. "Now the 'jurisdiction' is not disputed, and it is '*necessary*' to an efficient exercise of this jurisdiction that the Court have authority to compel the exercise of a ministerial duty by the corporation, which by law they are bound to perform, and *by the performance of which alone the plaintiff's remedy can be effected.*" And in Wayman v. Southard, 10 Wheat., 1, referred to by Mr. Justice Grier, the 14th section of the act was held to embrace writs of execution, and in the opinion by Marshall, C. J., it was said, (page 23): "The jurisdiction of a Court is not exhausted by the rendition of its judgment, *but continues till that judgment shall be satisfied.* Many questions arise on the process subsequent to the judgment, in which juris-

diction is to be exercised. It is, therefore, no unreasonable extension of the words of the act, to suppose an execution necessary for the exercise of jurisdiction. Were it even true that jurisdiction could technically be said to terminate with the judgment, an execution would be a writ necessary for the perfection of that which was previously done, and would, consequently, be necessary to the beneficial exercise of jurisdiction." To the same effect is the language of Thompson, J., in Bank of U. S. v. Halstead, 10 Wheat., p. 64: "The suit does not terminate with the judgment, and all proceedings on the execution are proceedings in the suit."

This reasoning is, by the decision in Knox County v. Aspinwall, extended and applied to a *mandamus* when *that* writ, (instead of a *fieri facias* or *ca. sa.*,) is the proper and effective instrument for executing the judgment of the Court, as is the case when the judgment-debtor is a civil corporation, having no property subject to execution, but having the power, and being bound by its contract, to levy a tax to pay the debt. Hence it appears, that the present proceeding, instead of being an original, independent suit, is merely an application to the Court for the writ of *execution*, proper in the particular case, to carry into effect its previous judgment; and is directly connected with and dependent upon that judgment. And now the question recurs, will the Court suffer itself to be arrested in issuing a writ to execute its judgment duly rendered in a case confessedly within its jurisdiction, by an injunction from a State Court, proceeding on the sole ground that the judgment sought to be executed, *was erroneously rendered?*

For this *is* the ground on which the injunction proceeds. The State Courts have not undertaken to enjoin the levying of any tax to pay these bonds, on grounds which, admitting the validity of the bonds, and the right of the bondholders to recover judgments thereon, deny merely their right to have a special tax

levied to pay them. This ground has never been taken, by any Court. It is admitted on all hands, that the right to have the bonds paid, and the right to have the tax levied to pay them, are inseparable, and must stand or fall together. This must be apparent to the Court from the very terms of the law, as set forth at the beginning of this argument. The vote of the county to issue the bonds, to be of any force, *must* also provide for the tax to pay them; and this provision for the tax, as already seen, constitutes an integral and vital part of the contract with the bondholders. There is no divorcing the bonds from the tax, and no Court has ever undertaken to divorce them. (See 14 Io. 107, ib. 47, ib. 593.)

When, therefore, a State Court undertakes to enjoin the county officers from levying a tax to pay judgments recovered on these bonds in the Federal Court, it does it on the ground that the bonds are void, that is, that the federal court ought not to have rendered the judgments, and thereby assumes to sit as a Court of error upon the judgments of the Federal Court, and to reverse them. This surely cannot be submitted to for a moment. What the State Court cannot do *directly*, i. e., reverse the judgments of the U. S. Circuit Court, it cannot be permitted to do indirectly, by obstructing their execution. It is a plain attempt to usurp an *exclusive* jurisdiction over a subject-matter, over which the law has given a *concurrent* jurisdiction to the Courts of the United States. If the State Courts do not see fit to yield their views as to the validity of these bonds, to those which obtain in the Federal Courts, they must content themselves with giving effect to their own opinion, as against parties who choose to come or are by proper process brought, before them. They cannot be permitted, by the sweeping process of enjoining the county from paying, to deprive the non-resident bondholders of their privilege of resorting to the Courts of the United States; a privilege which, we repeat, was with wise forethought secured

to them by the framers of the constitution, with an eye especially to just such cases as the present, when local influences, passion or prejudice have induced the State Courts to swerve from the paths of "truth, justice and the law."

And it makes no difference, we submit, whether the injunction be granted before or after the recovery of the judgment on the bonds; nor whether (as in the present case) it purports to restrain a tax to pay such judgments, or (as in other existing cases,) only to restrain a tax to pay interest or principal on the bonds, merely as such. The State Courts can prevent the execution of judgments of the Federal Courts, neither *after* their rendition, nor, by anticipation, *before* rendition. It is too plain for argument, that such an injunction is no bar to the subsequent *recovery* of judgments on the bonds, in *any* court having jurisdiction of the subject-matter and the parties: and a judgment which a Court has a right to render, it has a right, and is bound, to execute. As to an injunction, rendered without making the bondholders parties, and purporting only to restrain a tax to pay the *bonds*, or the interest thereon, (without mentioning judgments,) we confidently claim, that it ought not to be held by its very terms, and true construction, to have been *intended* to interfere with the payment of *judgments*; and this, not on the narrow and technical ground, that the debt eludes the grasp of the injunction by a mere change of its *name* from "interest" to "judgment," (which would appear to have been the view taken of the argument by the Court below,) but on the far broader ground, that not merely the *name*, but the *character* of the debt, has been modified; that it has become, not only a bond debt, but a bond debt, solemnly adjudged by a competent tribunal to be legally due and payable, by virtue of a valid contract; that the Court granting the injunction must be presumed to have known that it had no power in the case before it, to settle *against* the bondholder, the question of the validity of his bonds, and that anoth-

er tribunal to which he might resort, might settle that question in his favor; and that it must be presumed to have acted accordingly, and not to have *intenaed* to do what it had no power to do. Such an injunction will have full respect paid to it, in being held, by its own terms, to decide the question only as between the public and the county officers, and to restrain the latter from paying the bonds only so long as they shall remain *merely* bonds, i. e. until the bondholder shall have vindicated his right to have them paid, by the recovery of judgment thereon, in a competent Court.

The Supreme Court of Iowa has itself sanctioned this view of the conclusive effect of a judgment recovered on a corporate debt, in reference to a subsequent application for a mandamus to compel a tax to pay it. In The State *ex rel.* Clark, Dodge & Co. v. The City of Davenport, 12 Iowa, 335, which was a proceeding by mandamus to compel the city to levy such a tax, the Court say, (page 340,) "If, however, these bonds were issued under a special law, or for some special purpose, and if the law or contract made it obligatory upon the Council to levy, collect, and place in the treasury the means to meet the interest thereon, and their ultimate redemption, then this duty devolved as well before as after the issuing of execution, and the writ could properly issue to compel its performance. Upon the question whether the performance of the act could be compelled before judgment, this Court might not be united, and we therefore reserve it until it arises, it being sufficient for this case to hold, that after judgment in the case supposed, the duty might be enforced by mandamus. *The judgment determines, by a solemn adjudication, the right of the party to recover, and to the payment of the debt.*"

And to the same effect is a statutory provision of Iowa, which we desire in this connection, to press upon the notice of the Court, viz: Section 3275, of the Revision of 1860, which occurs in the chapter on executions and immediately follows the section

before referred to, exempting public buildings, &c. of civil corporations, and property of private citizens, from liability to executions against such corporations. It provides that "in case no property is found on which to levy, which is not exempted by the last section, or if the judgment-creditor elect not to issue execution against such corporation, he is entitled to the amount of his judgment and costs, in the ordinary evidences of indebtedness issued by that corporation. And if the debtor corporation issues no scrip or evidences of debt, *a tax must be levied as early as practicable, sufficient to pay off the judgment, with interest and costs.*"

It has been held that this section confers no power on a city corporation to levy a tax beyond the amount it is authorized to levy by its special charter, (*Clark, Bodge & Co.* v. *City of Davenport*, 14 Iowa, 494;) the result of which probably is that the power to levy the tax cannot be derived solely from this section. But in the present case and all others like it, the power is derived from the vote of the people of the county, authorized by the law; and this section recognizes and establishes a new and conclusive obligation to exercise the power, imposed by the recovery of judgment on the bonds.

And while there has been no decision defining the character of the "scrip, or evidences of debt," contemplated by the section, nor deciding whether the ordinary warrants on the county treasury, which are made payable to bearer and in practice circulate freely from hand to hand, come within its purview, it has been determined in two cases, (*The State ex rel. Clark et al.* v. *City of Davenport*, 12 Iowa, 335, and another case not yet reported, but to appear in 17 Iowa, now in press,) that, under this section, the judgment-creditor cannot be compelled to take such "scrip," but may elect whether he will do so, or will require the levy of a tax to pay his judgment. These decisions and this statute are cited here as confirmatory of our position that by a recovery of judg-

ment by the bondholder his claim is taken out of the reach of an injunction, restraining a tax to pay the interest or principal of the bonds in general, especially one to which he was not a party.

The Circuit Court has jurisdiction, no less than the State Courts, of a suit to enjoin municipal officers from levying a tax, if the plaintiff be a citizen of another State. (*See Gilman* v. *City of Sheboygan*, 2 *Black*, 510). Suppose the views of the law as to these bonds held by the State and Federal Courts respectively, were reversed, the State Courts sustaining, the federal denying their validity; and suppose, after judgment in favor of a bondholder on his bonds in a State Court, the U. S. Circuit Court, at the suit of a non-resident tax-paper, should undertake to enjoin the county officers from paying *that judgment*, specifically, or from taking the necessary steps to provide means to pay it, (which amounts to the same thing.) on the ground that the bonds were void, and the State Court erred in rendering judgment on them. What would be thought of such a decree? Would this Court hesitate a moment to reverse it on appeal? Yet this is precisely what the State Court must be held to have done, and to have *intended* to do, and to have had the power to do, in respect to the relator's judgment in the U. S. Circuit Court, in order to sustain the judgment below in this case.

Again, suppose, after judgment in favor of a bondholder in the Federal Court, the county officers had actually raised by tax the money to pay the judgment, and had it in their hands, and a State Court should enjoin them from paying it over, on the ground of error in the judgment, would this be regarded as a valid reason why the Federal Court should not *mandamus* them to pay it over? It must, if the Circuit Court was right in the view it took of this case.

In the opinion of the Court below, to sustain the position that this proceeding is new and independent of the suit on the bonds,

stress was laid on the fact that that suit was against the *county*, while this proceeding is against the Board of Supervisors, which, it was said, is a different body. But the supervisors are simply the officers of the county, entrusted with the general care, supervision and management of its interests, like the directors of a bank, or a railroad company. They have no rights in the matter, distinct from those of the county, and are certainly bound, to the fullest extent, by every judgment against the county. In fact, in a suit against the county, it would be their province, and theirs alone, to take care of the interests of the county, to employ counsel to see to the defense, and in general to manage and control the case, on behalf of the defendant. For all purposes of dealing with third parties, they constitute the corporate body, since it is only through them that it acts. The substantial identity between the officers and the corporate body, was distinctly recognized in *City of Louisville* v. *Kean*, 18 B. Monr., 9, (13.) and *Maddox* v. *Graham*, 2 Met. (Ky.,) 56, 71, where it was held that a mandamus, in a case like the present, to compel the officers to perform a corporate act, was to be regarded as a proceeding against the corporation.

But it is claimed that *mandamus* is a remedy to which a party never has an absolute right; that is discretionary with the Court to grant or refuse it; and that it will not be granted against public officers, where the effect will be "to put them between two fires."

We deny that in a case like the present, the writ is discretionary. It is not asked as an original remedy. The relator has vindicated his rights by recovering a judgment, and has an absolute right to the only effectual process for executing that judgment. Moreover, this whole doctrine of "discretion" in reference to *mandamus*, we understand to have been distinctly repudiated in this Court, in the celebrated case of *Comth. of Kentucky* v. *Dennison*, 24 How., 66, in which the late Chief Justice, deliv-

ering the opinion of the Court, says, (page 97,) "It is equally well settled, that a mandamus in modern practice, is nothing more than an action at law between the parties, and is not now regarded as a prerogative writ. It undoubtedly came into use by virtue of the prerogative power of the English Crown, and was subject to regulations and rules which have been long since been disused. But the right to the writ, and the power to issue it, has ceased to depend upon any prerogative power, and it is now regarded as an ordinary process in cases to which it is applicable. It was so held by this Court in the cases of Kendall. v. U. S., 12 Pet., 615; Kendall v. Stokes *et al.*, 3 How., 100." And again, on page 98, "The writ of mandamus does not issue from or by any prerogative power, and is nothing more than the ordinary process of a Court of justice, *to which every one is entitled, where it is the appropriate process for asserting the right he claims.*"

As to the "putting the officers between two fires," i. e. exposing them to punishment for contempt of the injunction, if they obey the mandamus, and *vice versa*, we submit that it must be presumed that the State Court will act properly, rather than improperly, in the matter; especially in view of the wide discretion which a Court possesses in reference to punishing for contempt. This is peculiarly the affair of the Court, in which private parties possess no absolute rights. (See State of Pennsylvania v. Wheeling and Belmont Bridge Co., 18 How. 421, 436, concluding paragraphs of opinion of the Court, per Nelson, J). This principle is so fully recognized by the statute law of Iowa, as to proceedings for contempt, that "no appeal lies to an order to punish for a contempt," (Revision of 1860, Sec. 2696,) nor to an order *refusing* to punish for contempt *in disobeying an injunction;* expressly held by the Supreme Court of Iowa, in First Congregational Church, &c. v. City of Muscatine, 2 Iowa, 69; and see the opinion of the Court, as to the nature of the power to punish for contempt. That it would be in the highest degree

improper for the State Court, in the exercise of this discretion, to undertake to punish the defendants, as for a contempt, for obeying a mandamus such as is asked for in this cause, in view of the fact that the bondholders were not parties to the injunction suit, and are not bound by the proceedings therein, and that the mandamus would have been granted at their instance, and in consequence of their having established their right to payment of the bonds, by obtaining judgment thereon, cannot for a moment be doubted. And this Court will presume that the State Court will act according to the plain dictates of reason and justice. It may be thought that this would be rather a violent presumption, in reference to a Court which has rendered this injunction-decree, *after* judgments recovered on the bonds in the Federal Court. But in justice to the judge who rendered that decree, it ought to be stated, that (as we are informed by members of the bar, who were present, and whose statements are entitled to entire reliance,) he allowed the decree to be entered, because no resistance was made to it by the defendants, saying at the time that he regarded it as totally without effect as against the bondholders. And from our knowledge of the looseness of the Iowa practice in this respect, we presume he had no hand whatever in shaping the particular terms of the decree, but that this was done solely by the attorneys.

But were it otherwise; were there reason to apprehend that the State Court would really be guilty of the folly of attempting to punish the county officers for obeying this mandamus, it is submitted that *this* Court cannot permit itself to be governed by such considerations. It cannot permit a State tribunal, by threats of pains and penalties, to terrify it out of enforcing its decisions. And if necessity shall arise, it will find the means of protecting the parties before it, in obeying its commands. It is believed, that a judgment of a State Court punishing a party, as for contempt, for acts done in obedience to a writ issuing from

the United States Court, might be reviewed and reversed on error in this Court under the 25th section of the judiciary act of 1789. (Ableman v. Booth, 21 How., 506.)

It only remains to notice two authorities much relied on by defendants' counsel.

The first is *Ex parte Fleming*, 4 Hill, 581; a decision of Mr. Justice Cowen, sitting alone at special term. (See page 533.) Though great stress was laid on this case by the Court below in its opinion, we confess our inability to see that it is at all in point. A proceeding was pending before a county judge, under the New York non-imprisonment act, to compel a judgment-debtor to pay the judgment. The judge had proceeded so far as to decide to issue a warrant to imprison the debtor, as provided by the act, and had made out and signed the warrant. At this stage of the proceedings he was served with an injunction issued by the United States District Judge for the Northern District of New York, on the application of the debtor, and directed to "Robert Fleming," (one of the judgment-creditors, and prosecutors of the proceedings, before the county judge,) "and to his agents, counsellors, attorneys, and *other officers* acting under him or by his direction," restraining further proceedings. In consequence of this injunction, the county judge refused to deliver the warrant. Application was made by the judgment-creditors to Judge Cowen, of the N. Y. Supreme Court, for a mandamus to compel him to deliver it, which was refused. Now, it is submitted that this case is not at all in point in the present case, for the following reasons. The injunction-suit itself appears to have been nothing more nor less than an application to the very familiar jurisdiction of equity, to restrain proceedings at law, on equitable grounds; and so far from its appearing that the judgment-creditors, who applied for the mandamus, were not parties to the injunction-suit, it expressly appears that *one* of them at least, *was* a party; since the injunction was directed to

him by name. Moreover, the act of March 2, 1793, Sec. 5, (1 Stat. at Large, p. 334,) forbids the granting of injunctions in the Federal Courts, without notice to the opposite party of the application, and was doubtless complied with. It is true, that the injunction would seem to have been issued in violation of the provision of the same act and section, that injunctions shall not be granted to stay proceedings in any Court of a State; unless in construing the statute a distinction be taken between proceedings before a State *judge*, and those before a State *Court*. But from the report, this statute would seem either not to have been brought to Judge Cowen's notice, or to have been considered by him inapplicable; for in his opinion he says that while he cannot "expressly see that the injunction was properly issued," he is "not prepared to deny that, under circumstances, it might have been properly issued." He goes on to say, in substance, that he cannot inquire whether the injunction was properly issued; that it must be respected, unless the judge issuing it wanted jurisdiction of the *subject-matter*; "for it is not made a question that he has it over the process, and over every person residing in his district." The argument for the granting of the mandamus, was evidently wholly based on the position that the injunction was void, for want of jurisdiction of the subject-matter; a position for which no foundation is perceived, other than the act of Congress already referred to, which must have been either overlooked or considered inapplicable. It is evident that this case is widely different from the one at bar. There are, it is true, one or two general expressions in the opinion, which may seem to favor the position of the defendants here. But general expressions in a judicial opinion are always to be considered with reference to the particular facts of the case decided. Under this rule, unless we are greatly mistaken, the case of *Ex parte* Fleming will be found to be no authority in favor of the defendants in the present case.

The other case referred to is Ohio & Ind. R. R. Co. v. Comrs. of Wyandot Co., 7 Ohio State R., 278. A statute of Ohio authorized the commissioners, on a vote of the people of the county to that effect, to subscribe on behalf of the county, for stock in the railroad company. The company applied to the Supreme Court of Ohio, for a mandamus to compel the commissioners to subscribe for the stock, in pursuance of a vote of the people. The defense was, that in a suit in equity, *also in the Supreme Court*, by certain tax-payers against the commissioners, to which the railroad company was not a party, the commissieners had been perpetually enjoined from subscribing for the stock. And this was held by three judges (two not sitting,) to be a complete bar to the mandamus.

The opinion, by Brinkerhoff, J., after stating the case, is as follows:

"It is true, the Ohio & Ind. R. R. Co. was not a party to the proceeding in chancery in which the decree of injunction was rendered, and that decree does not, therefore, bind or conclude the company by any of its findings; but it does, nevertheless, have the effect, while it exists in full force, to preclude the company from having the peculiar remedy which it now here seeks. If we were to award the peremptory writ of mandamus, we should command the commissioners of Wyandot county to do the very act which, by our decree of injunction, in full force, they are forbidden to do. The idea of such inconsistency is wholly inadmissible. If the peremptory writ of mandamus were to issue, and the defendants failed to obey it, they would be liable to process for contempt; whilo on the other hand if they obeyed it they would be equally in contempt for disobedience to the decree of injunction. Even where the order or decree of injunction is made by a Court of competent jurisdiction, other than that in which the mandamus is sought, the latter will not thus place a party between two fires, by subjecting him to contradictory orders. *Ex parte Fleming*, 4 Hill, 581. Wheth-

er there be any way in which the Ohio & Ind. R. R. Co. can get aid of the decree of injunction, is a question not before us. As to that, it is at liberty to proceed as it may be advised. But we are clear that it cannot be done collaterally in this proceeding."

This decision will be seen to be directly in conflict with *Bowen* v. *Irish Presbyterian Church*, 6 Bosworth, 245, before cited. With great deference to the learned Court, their reasoning appears to us to be most extraordinary. The injunction decree was *in the same Court*. Of course the railroad company would not be entitled to the mandamus, unless they should succeed in satisfying the Court, that they were entitled to have the stock subscribed, and that therefore the injunction previously granted, prohibiting it, (to which the company was not a party,) had been, through mistake of law or fact, wrongly granted. But the Court hold that the injunction has the effect to *preclude the company from showing this*, (at least for the purposes of a mandamus,) although they admit, in the same breath, that the company not being parties to the suit, are not bound by any of the findings therein! "The idea of such inconsistency," between two judgments of the Court, is said to be "wholly inadmissible." It is not perceived why it is any more "inadmissible" than in any other case where a party, not being bound by a judicial decision on a given subject-matter, subsequently prosecutes a suit in relation thereto and establishes his right to a different decision; except so far as this inconsistency might necessarily involve practical inconvenience to the commissioners, by "putting them between two fires." And as to this, the danger is purely imaginary. The Court would not be likely, after having been satisfied that they had erred in granting the injunction, and after having commanded the commissioners to do what they had before forbidden, in the exercise of their discretion as to contempts, to turn round and punish them for disobedience of the injunction. It is submitted that the case was wrongly decided; but it well illustrates the difficulties and perplexities in which Courts may involve

themselves by granting injunctions in disregard of the fundamental rule of equity practice which requires all parties in interest to be brought before the Court.

It may be added that this decision, were it sound, is an authority against us only upon the *first* of our two main positions, viz: that the injunction decree cannot preclude the relator from having a mandamus, because he was not a party thereto. It does not touch the other points in the case. The mandamus was applied for by the railroad company, as an original remedy. They had obtained no previous judgment establishing their rights, to execute which they asked for the writ; and the injunction forbade the precise and specific act, the doing of which they sought to compel.

In conclusion, we desire to express the conviction, that the day is past, when the citizens of any State can successfully undertake in any form or mode to defy or to evade the lawful authority of the government of the United States. The wide-spreading and beneficent results of that authority, recently so triumphantly, but at such fearful cost, vindicated against open and armed rebellion, have became evident to the people of this land, as they have never been before; and the constitution of government from which these blessings flow has became correspondingly dear. It is confidently hoped that the Courts of the Union, and especially this august tribunal, to whose hands is committed, in the last resort, the vindication by legal and peaceful means of the authority of the constitution and laws of the United States, will fearlessly and faithfully resist and defeat all attempts on the part of the state courts, officers or citizens, in whatever mode or form, to nullify or evade their rightful jurisdiction; confident, that in so doing, they will receive the hearty applause and support of an enlightened and patriotic public opinion.

JOHN N. ROGERS, DAVENPORT, IOWA,
For the Plaintiff in Error.

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SUPREME COURT OF THE UNITED STATES.

DECEMBER TERM, 1867.

THE UNITED STATES, EX REL.
MARCUS C. RIGGS,
Plaintiff in Error,
vs.
THE BOARD OF SUPERVISORS
OF JOHNSON CO., IOWA,
Defendants in Error.

ERROR FROM THE CIRCUIT COURT OF IOWA.

ARGUMENT FOR PLAINTIFF IN ERROR,

BY JAMES GRANT.

SUPREME COURT OF THE UNITED STATES.

DECEMBER TERM, 1867.

THE UNITED STATES, EX REL. MARCUS C. RIGGS,
Plaintiff in Error,

vs.

THE BOARD OF SUPERVISORS OF THE COUNTY OF JOHNSON, IOWA,
Defendants in Error.

ERROR FROM THE DISTRICT OF IOWA.

ARGUMENT FOR PLAINTIFF IN ERROR.

CASE.

Marcus C. Riggs, a citizen of New York, filed his information in the Circuit Court for the District of Iowa, against the Board of Supervisors of the County of Johnson, alleging that on the 1st of December, 1853, the County of Johnson issued fifty bonds of one thousand dollars, payable on the first of June, 1873, with seven per cent. interest, payable half yearly, upon the surrender of coupons payable to the holder, to aid in building the Lyons Iowa Central railroad; that Riggs owns forty-seven of these bonds and unpaid coupons from 1st June, 1854; that these bonds recited, that they were issued in payment of a subscription to the stock of said railroad company, and were secured by a special tax of three mills for ten years, and thereafter of one per cent., on the taxable property of said county, until said bonds were paid, voted by the people of Johnson County, in pursuance of an express

provision of the Code of Iowa, which tax was a special lien on the property of the county, and equivalent to a mortgage on the same.

That on the 12th of May, 1864, Riggs recovered in said Circuit Court judgment on said coupons or interest warrants for $5,189.26, interests and costs taxed at , as by the records of said court will fully appear; that said judgment is unpaid; execution has been issued and returned no property found.

That said bonds were issued in pursuance of a vote of the electors of Johnson County, regularly held on the 17th of May, 1853, and among other things voted to be done at said election, was a provision that there should be a tax of three mills on the dollar on the total valuation of the property of said county for the first ten years thereafter, to pay the interest on said bonds, and after that a tax of not more than one per cent. to pay principal, when due, and interest, and said tax to be levied until the bonds were paid. That the County Judge being satisfied that the requirements of the Code had been substantially complied with, and that a majority of the votes cast at said election were in favor of said proposition, caused the same and the result to be entered at large on the minute book of said county, and that thereby said vote had the force and effect of an act of the legislature.

That it was the duty of the County Judge, until the creation of the Board of Supervisors, which was done by an act of the legislature passed March 22, 1860, and after that the duty of the Board of Supervisors, to levy annually for the year 1854 and for each year after for ten years, a tax of three mills on the dollar on the valuation of the county, and after the expiration of ten years, a tax of not more than one per cent. until the bonds and interest were paid.

That fifty thousand dollars of said bonds were issued, bearing interest at the rate of seven per cent., payable half yearly, making annually for interest thirty-five hundred dollars. After the lapse of ten years, an additional tax, so as to make one-tenth of the principal, so that the tax for the last ten

years would be thirty-five hundred dollars for interest, and five thousand for principal. That the value of the taxable property of Johnson County for each year since 1853 was not less than four nor more than six millions of dollars.

That since 1858 no tax whatever has been levied to pay principal or interest, but the duty has been wholly neglected. That it is the duty of said Board each year to fix the amount and rate to be levied.

That they had been notified to levy said tax, and refused to do so, though it was their duty without a demand. That it was their duty to levy and collect forthwith a tax to pay said judgment, the payment of which had been demanded and refused by said Board. That the relator was without other adequate remedy, and praying for a writ of mandamus, commanding the said Board to levy, in addition to the usual taxes, an annual tax on the yearly valuation of said County for the year 1858, and each succeeding year to 1864, of three mills on the dollar, and after that not exceeding one per cent. nor less than sufficient to pay the amount of said judgment and costs, and the principal and interest falling due on said bonds, and especially the interest warrants included in plaintiff's judgment, and to continue the same until said bonds and interest are fully paid.

An alternative writ was issued in pursuance of this information on the 12th of April, 1865; service was made on the 15th of April. On the 10th of May, 1865, the defendants made a return; that as a reason why said writ should not be issued, about the 6th of October, 1864, (after the plaintiff's judgment in May, 1864, and execution issued), Charles B. Berryhill, for himself and other citizens of Johnson county, filed in the office of the Clerk of the District Court of Johnson County, a petition, setting forth the intention of said Board to levy and the Treasurer to collect a tax to pay principal and interest on said bonds, and praying an injunction to restrain the proposed action of said Board and Treasurer; that said petition was on that day presented to the County Judge, and he allowed the writ. That on the 3rd of November, said cause

was heard in the District Court of Johnson County and determined. That said Court having jurisdiction of the subject matter and the parties thereto, (the tax-payers and the Board of Supervisors, their trustee and agent) "decreed that said Board and Treasurer are enjoined, the former from levying and the latter from collecting, any tax to pay said interest on said bonds, or any judgment rendered thereon or any part thereof. That said judgment is in full force and not appealed from, and is binding on the defendants. That a copy of the record is attached and made part of return, and for that reason they cannot levy or collect the tax desired, or any part thereof."

The record, made part of the return, shows the plaintiff's petition, alleging that these fifty thousand bonds issued to the Lyons Iowa Central Railroad Company were issued without authority of law, and are null and void. That the Board of Supervisors threaten to levy a tax to pay principal and interest of said bonds. Prays that the Board of Supervisors and Treasurer may be made defendants to the action, and that they may be enjoined perpetually from levying any tax to pay principal or interest, or any judgment or judgments rendered therefor, or any part thereof. The defendants had, by the laws of Iowa, sixty days from service to answer this bill. No answer was filed. Annexed to the bill was an exhibit of the taxes levied for the year 1865, September previous to the filing of the bill, and no tax whatever was levied to pay either principal or interest on these bonds.

The cause was finally heard on the petition and proofs offered. The record shows affirmatively no proof. Without an answer, and without a default even by the defendants before the time required by law for the filing of an answer, and a perpetual injunction was allowed against levying or collecting any tax to pay either interest or principal of said bonds, or any judgment rendered thereon, because said bonds were and are illegal and absolutely null and void. The defendants never appeared, never took a writ of error to the Iowa Supreme Court.

To this return, or rather this part of it, the plaintiff demurred,

1. Because the relator was no party to the proceedings in the State Court.

2. Because the whole proceedings in the State Court were begun and the judgment rendered after the judgment was rendered in this Court.

3. Because after the judgment was rendered in the Federal Court, the State Court had no jurisdiction, power or authority, by any judgment to which the relator was no party, to prevent the relator from using the process of the Federal Court to collect his judgment, nor even if he was a party to such proceeding after judgment.

4. Because the decree set out, wherein Berryhill was plaintiff and the Board of Supervisors were defendants, and to which the plaintiff was no party, is no bar to the relief sought.

The Court below overruled this demurrer, the plaintiff abided by it, and the suit was dismissed. The plaintiff brings the cause here by writ of error, and assigns for error the overruling of the demurrer.

ARGUMENT.

Since this writ of error was taken, so much progress has been made by this Court in settling the various questions arising upon repudiated bonds in Wisconsin, Illinois and Iowa, that we can present this case in an entirely different aspect from that taken by the Court which decided it.

The history of the judicial decisions of the Iowa Supreme Court are fully known to, and its recent judicial repudiations been uniformly reversed by this Court. The highest judicial tribunal in Iowa, after having for a series of years held these bonds to be constitutional and valid, and induced the public to invest in them on the faith of adjudicated cases, for causes not material to here examine, changed its opinion, and held the bonds null and void. This Court has uniformly held them constitutional and valid, and declared that the first judicia

interpretation of the Iowa Supreme Court was a part of the contract, which it was not in the power of the State Court to impair. The opinion in Gelpcke v. Dubuque, where this Court held that the State Court would not be followed in a change of opinion, which impaired the obligation of contracts made on the faith of the previous interpretation by the same Court, has been uniformly adhered to in this tribunal. In Havemeyer v. Iowa County, 3 Wallace, 294, this Court said: "We can only look to the condition of things which subsisted when the bonds were sold. This brings us within the rule in Gelpcke v. Dubuque, where it was held, that if the contract, when made, was valid by the constitution and laws of the State, as then expounded by the highest authorities, whose duty it was to administer them, no subsequent action by the legislature or judiciary can impair its obligation. This rule was established upon the most careful consideration. We think it rests upon a solid foundation, and we feel no disposition to depart from it."

In Thompson v. Lee County, 3 Wallace, 327, this Court said: "If the bonds in suit had been executed since the last decision in Iowa, they would be controlled by it, but the change in judicial decision cannot be allowed to render invalid contracts which, when made, were held to be lawful. The Courts of Iowa having, when these bonds were issued, construed their constitution and laws so as to give them force and vitality, cannot, by a subsequent and contrary decision, destroy them."

In Rogers v. Burlington, 3 Wallace, this Court held, that "The city of Burlington, under a power to borrow money for any public purpose, could lawfully exercise such power by giving its bonds to a railroad company instead of borrowing the money directly."

"Repeated determinations of this Court, embracing a period of ten years, have expressed the concurrence of this Court in the general current of decisions upon the subject in the State Courts, and it is in vain for parties to expect that the Court,

in the face of these recorded judgments, can come to any different conclusions."

In Chamberlain v. Burlington, 19 Iowa, 395, the Iowa Supreme Court decided differently upon the same bonds, in a cause where the only adverse party in interest was not a party to the suit, and this case, with all the recent Iowa decisions, were brought to the attention of this Court in Mitchell v. Burlington, 4 Wallace, 270. This Court held "it is argued that the State Court has decided recently that the city had no authority to issue these bonds.

"Similar suggestions have several times been made, and this Court has, on two occasions, carefully examined its opinion, and shown to a demonstration that they cannot avail when the bonds, at the time they were issued, were valid by the constitution and laws of the State, as then expressed by the Courts of the State. Further discussion is unnecessary, as the point is controlled by these decisions."

In Marshall v. Schenk, 5 Wallace, this Court said: "Prior decisions of the State Court were in accordance with the decision of this Court, and as they were supposed to be correct expositions of the law of the State at the period when the bonds were issued, the latter adjudications cannot control our judgment."

In Galena v. Amy, 5 Wallace, where a tax was by statute to be levied, if the corporation believed the public good required it, the Court said "This power is a trust for the benefit of the creditor, and the plain duty of the Court was to order its exercise. The insolvency of the city, its poverty, &c., can have no influence. Where these bonds are clothed with legal validity, it is our purpose to sustain them, and give their holders the benefit of all the remedies to which the law entitles them."

In Board of Supervisors of Rock Island v. State Bank, 5 Wallace, where the act provided that the County Court *may* levy a tax, this Court said: "This is no discretion; though permissive in form, in directing what they are empowered to do for a third person, it means they shall do. The power is

given not for their benefit, but for his, does not involve a mere discretion, but imposes an absolute duty."

In Van Hoffman v. Quincy, 4 Wallace, 535, where the legislature had, before the issue of the bonds, authorized the levy of a tax to pay the interest on bonds, and after the issue of the bonds repealed the authority to levy it, this Court said: "The laws which subsist at the time and place of making a contract, and where it may be performed, enter into it and form part of it, as if they were expressly referred to or incorporated into its terms. This principle alike governs those which affect its validity, construction, discharge and enforcement. Ideas of validity and remedy are inseparable. The obligation of a contract is the law which binds the parties to perform their agreement. A right without a remedy is as if it were not; for every beneficial purpose it may be said not to exist. The power to levy the tax becomes a trust which the donor cannot remove. Neither the State nor the corporation can any more impair the obligation in this way than in any other. The act of 1863 (the repealing act) is a nullity. It is the duty of the city to levy and collect the tax as if it was not in force."

"The power of the United States Courts to issue a writ of mandamus to compel the levy of a tax to pay a judgment is vested in it by reason of the jurisdiction acquired by the judgment, and not where it is to be created or acquired by the writ itself."

McLung v. Silliman, 6 Wheaton, 598.

"The jurisdiction of the Court is not exhausted by the rendition of the judgment, but continues until the judgment is satisfied. Many questions arise on process subsequent to the judgment, in which jurisdiction is to be exercised."

Wayman v. Southard, 10 Wheaton, 28.

Many cases have been decided in this Court that suppletory process, either at law or equity, to execute or perform the prior judgments of the Federal Courts, is auxiliary to the original suit, and maintained without regard to the jurisdiction of the Court as to the parties. It is not necessary to cite

more than the case of Minnesota Co. v. St. Paul Co., 2 Wallace, 609.

"The jurisdiction of the Court to give the judgment in this case is not disputed; nor can it be denied that Congress has the power to make laws necessary for carrying into execution all its judgments. Has it done so? By the 14th section of the act of 1789, the Courts of the United States have power to issue writs of *scire facias*, *habeas corpus*, and all other writs not specially provided by statute, which may be necessary for the exercise of their respective jurisdictions, and agreeably to the provisions of the common law. Now the jurisdiction is not disputed, and it is necessary to the efficient exercise of this jurisdiction to compel the exercise of a ministerial duty by the corporation, which, by the law, they are bound to perform, and by the performance of which alone the plaintiff's remedy can be effected. The fund to pay this judgment, by the face of the contract, is a special tax to be laid and collected by the defendants. They refuse to perform a plain duty. There is no other writ which can afford the party a remedy, which the Court is bound to afford if within its constitutional power, except that afforded by this writ of mandamus."

Board of Supervisors of Knox Co. v. Aspinwall, 24 Howard, 384, 385.

"If this judgment had been obtained in a State Court, it would not be pretended that this writ was not the proper remedy, and that all defenses arising to the original action would be merged in the judgment."

Coy v. Lyons City, 17 Iowa, 1.

"Assuming that the general laws of Indiana permit the public property to be levied upon and sold for the ordinary debts of the county, it is clear that the bonds and coupons issued under the special provisions of this act were not left to this uncertain and insufficient remedy. The act provides a special fund for the payment of these obligations, on the faith and credit of which they were negotiated. It is especially incorporated into the contract, that this corporation shall assess a tax for the special purpose of paying the interest on

neither seat nor penal property can be levied on in Iowa

Code of 1851 § 1851 [illegible]

these coupons. If the commissioners neglect or refuse to perform this plain duty, the only remedy which the injured party can have is the writ of mandamus."

Board of Supervisors of Knox Co. v. Aspinwall, 24 Howard, 383–4.

The defendant set up in bar of this relief, that one Berryhill, a citizen of Johnson County, in a suit in Johnson, Iowa, District Court, against them as defendants, not including the plaintiff in this suit, obtained an injunction against the levy of a tax and paying this judgment, because the bonds were unconstitutional and invalid.

We answer this plea,

1. The injunction, if obtained before the suit, would have been no bar to the plaintiff's recovery, and this is admitted by the other side. The issuance of it after the recovery of this judgment, is no bar to the writ of writ of mandamus. The remedy by mandamus is the process to enforce the judgment for the plaintiff.

The writ of mandamus issues, not to give jurisdiction, but to enforce jurisdiction already acquired.

"No State can control the exercise of any authority under the Federal Government."

It has been adjudged that no State Court has any authority or jurisdiction to enjoin a judgment of the Circuit Court of the United States, or *to stay proceedings under it.* This was attempted by a State Court in Kentucky, and decided to be of no validity by the Supreme Court of the United States, in McKim v. Voorhies, 7 Cranch, 279. No State tribunal can interrupt, by process of replevin, injunction or otherwise, the exercise of the authority of the Federal officers, and any intervention by State authority for that purpose is unlawful. This was so declared by the Supreme Court in Slodem v. Mayberry, 2 Wheaton, 1.

1 Kent, 451, top page, 8th ed.

"Any restraint by State authority or State officers in the execution of the process of the Federal Courts, is altogether

inoperative upon the officers of the United States in the execution of mandates which issue to them."

McNutt v. Bland, 2 Howard, 17.

McLung v. Silliman, 6 Wheaton, 598.

A State Court cannot enjoin the proceedings of a Federal Court, nor can a Court of co-ordinate jurisdiction restrain the proceedings of another Court of the same jurisdiction.

Phelan v. Smith, 8 California, 521.

Recketts and wife v. Johnson, 8 California, 30.

"State Courts cannot be permitted to restrain the process of the Federal Courts, by injunction or otherwise."

Duncan v. Dart, 1 Howard, 306.

"The process of a State Court or Judge has no authority beyond the limits of the sovereignty which confers the judicial power. A *habeas corpus* issued by a State Judge or Court, has no authority within the limits of the sovereignty assigned by the constitution to the United States. The sovereignty of the United States and of a State are as distinct and independent of each other, in their respective sphere of action, although both exist and exercise their powers within the same territorial limits, as if drawn by visible lines."

Ableman v. Booth, 21 Howard, 506.

2. It is argued, on the faith of some cases in the State Courts, that the State Courts having granted an injunction against the levying of the tax, and the payment of the plaintiff's judgment, this Court will not issue its mandamus because it is not a writ of right, and the Federal Courts will do no act to bring the defendants in peril of State Court attachments. The plaintiff not being a party to the proceedings in the State Court, as to him they are a nullity, "as if they were not."

"In all judicial proceedings, to render the judgment or decree binding upon the parties, the Court must be invested with jurisdiction of the parties as well as the subject matter, and if the parties are not before the Court, there can be no power to bind them by decree or otherwise. If the Court lacks such jurisdiction, its proceedings are void and binding

on no person. It may be questioned in any proceeding, whether direct or collateral."

Morris v. Hoyle *et al.*, 37 Illinois, 153.
Shelby v. Bacon, 10 Howard, 56.

The head note of this last case omits the word "parties," and is not a correct citation of the text. "And the Court must have jurisdiction of the *whole* matter." Shelby v. Bacon. It is admitted that the State Court has no jurisdiction to review the subject matter of the plaintiff's judgment in the Federal Court; how can it acquire jurisdiction to prevent the issue of process to enforce a judgment, into the validity of which it cannot inquire?

2. But the State Court not only did not acquire jurisdiction by the suit of Berryhill, after the judgments for the plaintiff, but it cannot get jurisdiction of the subject matter without having the parties before it.

Now let us inquire, who are the parties? The plaintiff brought suit to enforce payment of certain bonds issued by the authorities of Johnson County, which bonds created a specific lien for a specific tax on the property of the county, which specific tax is to be collected by said county officers. He is one party. The tax payers, on whose property the specific tax is to be collected, constitute the other party. These tax payers are organized into a body politic, the County of Johnson, whose business is transacted by the Board of Supervisors, and who, in all ordinary cases, are the organs or agents of the tax payers, and in this case are the trustees or agents appointed by them to execute this contract. In all legal proceedings by the plaintiff, one party to the contract, against the tax payers, the other party to the contract, the plaintiff uses his process against the Board of Supervisors, who are constituted by the tax payers their organ for that purpose. The suit of Berryhill, pleaded in bar by the defendants, his organ and agent, relates solely to the validity of the bonds themselves, and not to the propriety of levying a tax to pay them, independent of their validity.

How can the State Court get jurisdiction of the subject matter of these bonds at the suit of Berryhill, the tax payer, by bringing before them the Board of Supervisors, Berryhill's agent, and not the holder of the bond, the other party to the contract? It is simply absurd to avow that the State Court got jurisdiction of the subject by the suit of Berryhill, one party to the contract, against his own agent, whom he had appointed to perform the contract on his part, without making the bondholder a party to the suit. There was really but one party, the tax payer and his agent, before the State Court, and the Court annuls the contract itself; just as if a man can set up a judgment in bar of his adversary's right by his going into Court alone. This is precisely the defendants' plea.

3. The judgment of the State Court impairs the obligation of the contract, is null and void, and consequently is no bar to the relief sought. Before this Court will respect the plea of the defendants, that they are liable to be attached for disobedience to the judgment of the State Court, that judgment must be shown to be a valid judgment. This State Court judgment being in violation of the constitution, impairing the obligation of the contract, and being an adjudication of the relator's rights without making him a party thereto, is null and void, and the defendants cannot be punished for disobedience to it. In Bowen v. The First Presbyterian Church, 6 Bosworth's Superior Court Reports, 245, it was held in an action against the trustees of a relegious corporation to compel the specific performance of a contract for the sale of their real estate, duly authorized by an order of the Supreme Court, that it was no defense that in a suit subsequent to the contracts brought in that Court by members of the congregation against the trustees, an injunction had been issued restraining the corporation from selling; the plaintiffs in the former suit not being parties in the latter; that the judgment in the injunction suit did not bind the plaintiffs in the suit for the specific performance, and could not be given in evidence against them.

4. The defendants assume that the State Court will attach them, though this Court should hold their judgment not binding against the plaintiffs. There is no ground for such an assumption. By looking at the record pleaded, it appears on inspection to be a collusive case. The suit was brought October 6, the judgment was rendered November 3, without answer, without proofs, without defense. By the laws and practice of the Courts of Iowa, the defendants had sixty days to answer Berryhill's bill. Here was a judgment, without answer, in half that time. It was the duty of the defendants to answer and set up the judgment of the plaintiff in the Federal Court before the bringing of the suit in the State Court, and if the decision was against them, to carry the case first to the Iowa Supreme Court and then to this Court. It is said, that in our mandamus suit we made new parties. Not so. They are the same parties. The suit is really against the tax payers of Johnson County. The process is served upon the same officers in both the original suit and the auxiliary mandamus writs. They are the persons appointed by law to represent the tax payers and defend all suits where the county is a party, and upon whom all process against the county is served.

They could have carried this injunction suit, by writ of error, to the Supreme Court of the State and to this Court. The plaintiff, being no party to those proceedings, could not. It is quite apparent that the whole object of these State Court proceedings were instituted, carried on and ended to afford an excuse for not levying the tax to pay the plaintiff's debt. We are not arguing that this Court will undertake here to review the proceedings in the State Court. We are answering the argument, that this Court will do no act to put these defendants in contempt of State Court authority. If the defendants show a case evidently collusive on their part, if it is plain on the record which they present, this Court may well say, if you have voluntarily put your neck in the halter, go and be hanged.

But this Court, so far from assuming that the defendants

will be in danger of attachment from the State Court for obedience to a writ from the Federal Court, will argue just the reverse. This Court is sovereign to render this judgment, and to enforce it by mandamus, the only way in which it can be enforced.

"An injunction, attachment, *habeas corpus* or any other writ issued by a State Judge or Court, has no authority within the limits of the sovereignty assigned by the constitution to the sovereignty of the United States."

Aveman v. Both.

It is not in the lawful power of the State Courts of Iowa to issue or execute any writ which will interfere with the jurisdiction of the Federal Courts. If they do issue such a writ, it is a nullity, of no more force and validity than a writ from the King's Bench or Court of Cassation would be on this side the water. No one is bound by it, or can be punished for disobeying it. It is "as if it were not." This Court will presume that the State Court will know and perform its duty, and if the State Court should be so obstinate as to attempt to set itself up against the judgment of its superior tribunal, which no one believes, this Court will probably be able not only to survive the contest, but protect all who obey its authority.

If the Federal Court had authority to render the judgment for the plaintiff, it must have absolute, uncontrolled and uncontrollable authority to issue all writs necessary to enforce its collection.

In this case, the writ of mandamus is nothing but an execution; in fact, the only mode of "causing the money to be made." The State Court injunction is just as valid, and no more, than if it enjoined the Federal Court from collecting the debt.

If the argument of the defendants be true, that when the Federal Courts had rendered judgments their jurisdiction over the subject matter and parties is ended, and every new process to enable a plaintiff to realize his judgment is a new suit, and the State Court can, in the meantime, intervene and get

jurisdiction by a defendant's making his own servant a party, without bringing the real adversary before it, then the power of the Federal Court to enforce its judgment ceases; it is at the mercy of an inferior tribunal, which can render a judgment which impairs the obligation of contracts, and this Court is bound to respect it.

If the State Court can intervene by injunction against a mandamus, it can also against an execution, and why not against the Federal judgment? Indeed, it has so done in this case, and the other side contend that the State Court decision, which you have held is null and void, is to be respected by you, lest the defendants be subjected to the perils of an attachment of a Court whose judgment is void, not only because the real adverse party was not before it, but because it violates the constitution.

JAMES GRANT, *for Plaintiff in Error.*

Dw 7 by M 42

Supreme Court of the United States.

No. 177.—December Term, 1867.

UNITED STATES ex rel. MARCUS C. RIGGS, Plaintiff in Error,

vs.

BOARD OF SUPERVISORS OF JOHNSON COUNTY, IOWA,
DEFENDANTS IN ERROR.

Argument by HENRY STRONG, Attorney for Respondents.

McGill & Witthaow, Printers & Stereotypers, Washington, D.C.

Supreme Court of the United States.

No. 177—DECEMBER TERM, 1866.

UNITED STATES EX REL. MARCUS C. RIGGS, PLAINTIFF IN ERROR.

vs.

BOARD OF SUPERVISORS OF JOHNSON COUNTY, IOWA, DEFENDANTS IN ERROR.

ARGUMENT BY HENRY STRONG, ATTORNEY FOR RESPONDENTS.

Statement of the Case.

This is a mandamus suit, brought by the relator, Riggs, to compel the Board of Supervisors of Johnson county, Iowa, to levy a tax to pay a certain judgment recovered against said county, upon interest coupons attached to certain bonds issued by the county judge of said county, in payment of a subscription made by him, in the name of the county, to aid in building the Lyons Iowa Central Railroad.

The substance of the information on which the writ of mandamus is prayed for is as follows, to wit: That Marcus C. Riggs, a citizen of New York, filed his information in the Iowa circuit court, against the Board of Supervisors of the county of Johnson, alleging that on 1st December, 1853, the county of Johnson issued fifty bonds, of one thousand dollars each, payable on 1st June, 1873, with seven per cent. interest, payable on 1st of June and December in each year, upon the surrender of coupons payable to the holder, to aid in building the Lyons Iowa Central Railroad; that Riggs owns forty-seven of these bonds and unpaid coupons from 1st June, 1854; that these bonds recited, that they were issued in payment of a subscription to said road, and were secured by a special tax of three mills for ten years, and thereafter one per cent., on the taxable property of the county, until the bonds were paid by the people of Johnson county—voted in pursuance of an express provision of the code of Iowa—which tax was a special lien on the property of the county, and equivalent to a mortgage on the same.

That on the 12th of May, 1864, Riggs recovered in said circuit court, on said coupons or interest warrants, a judgment for $5,189 26,

interests and costs, taxed at , as by the records of said court will fully appear.

That said judgment is unpaid; execution issued and returned no property.

That said bonds were issued in pursuance of a vote of the people on 17th May, 1853, which provided for the levy of said tax of three mills for ten years, and not more than one per cent. thereafter, on the taxable property of said county, to pay said bonds and interest. That the county judge of said county, being satisfied that the law had been complied with, and a majority of the votes cast at said election in favor of said proposition to issue said bonds, caused the proposition and result to be entered at large on the minute-book of said county, and thereby said vote had the force and effect of an act of the Legislature. That it was the duty of the county judge, until he was superseded by the Board of Supervisors, in 1860, and after that time their duty, to levy and collect said tax for each year, to pay said interest. That both the county judge and supervisors have neglected to perform this duty. That the value of the taxable property of the county is four millions of dollars. That no tax has been levied since 1858. That it is now the duty of the Supervisors to levy said tax. That a demand has been made to levy and collect a tax to pay said judgment. That the relator is without adequate remedy at law, and he prays for a *mandamus* to compel the levy of said tax of three mills, for each year since 1858, to pay said judgment, interest, and costs, and the principal and interest on said coupons. Copies of the bonds, coupons, and demand are annexed to the information.

The alternative writ of mandamus was issued in accordance with the prayer, to which the respondents made return as follows:

The Board of Supervisors of Johnson county, defendant in the cause above entitled, for return to the alternative writ issued therein, and for reason why a peremptory writ of mandamus should not issue against them, say that it is true that on the 1st day of December, A. D. 1853, the county judge of Johnson county issued fifty bonds to the Lyons Iowa Central Railroad Company, numbered from one to fifty inclusive, for $1,000 each, and payable on the 1st day of June, A. D. 1873, with 7 per cent. interest, payable as alleged.

As to whether relator is the holder or owner of any of said bonds or unpaid coupons, or interest warrants thereto annexed, or as to whether the said coupons or interest warrants are unpaid from June 1st, 1854, the said defendant, for want of any knowledge or information, cannot admit or deny, and calls for proofs. The recitals in said bonds show for themselves, as a copy of one of them is attached to the affidavit of relator. As to whether said bonds or any of them are the property of relator, or were assigned to him, or any of the unpaid coupons, this defendant, for want of any knowledge or information sufficient to form a belief, cannot admit or deny, and calls for proof. Said board admits the rendition of said judgment, and that

said bonds were issued pursuant to what purported to be an election, held May 17, 1853, and the entry by the county judge on the minute book. The said board denies that any of said bonds, or any part thereof, should be raised by tax, as alleged, or that it is their duty, or that they have refused to levy or collect said tax, or that it is their duty to levy or forthwith collect a tax to pay said judgment, or that relator is entitled to a peremptory writ of mandamus, and ask judgment accordingly.

2. And the said Board of Supervisors, for further return and reason why a peremptory writ should not issue against it as prayed, say that heretofore, to wit, about October 6, 1864, Charles B. Berryhill, for himself and other citizens of Johnson county, filed in the office of the clerk of the district court of Johnson county, Iowa, a petition setting forth the intention of this board to levy, and of the treasurer to collect, a tax to pay the principal and interest on said bonds, and praying a writ of injunction to restrain the proposed action of said board and treasurer. That on the day and year last aforesaid said petition was presented to the county judge of said county for the allowance of a writ of injunction as prayed, which prayer was granted, and a writ ordered to be issued as prayed. That thereupon, on said 6th day of October, A. D. 1864, a temporary writ of injunction, from and under the seal of the clerk of said district court, was duly served on this board and treasurer. That afterwards, on the 3d day of November, A. D. 1864, the said cause of the said Charles H. Berryhill, for himself and other tax payers, against the said board and treasurer, was heard in the said district court of Johnson county, Iowa, and determined; that said court in said cause having jurisdiction of the subject-matter and parties thereto, ordered, adjudged, and decreed that they, the said Board of Supervisors, and their successors in office, and the said treasurer and his successors in office, are enjoined, the former (the said board) from levying or proceeding to levy, and the latter (the said treasurer) from collecting or proceeding to collect, any tax to pay said interest or interest coupons, or coupons or principal of said bonds, or any part thereof, or to pay any judgment or judgments rendered thereon, or any part thereof. That said judgment is still in full force and effect, is not appealed from, and is binding on the defendants thereto. The defendant hereto attaches duly certified copies of the records in the said cause of Charles H. Berryhill against the said board and treasurer as a part of this return, referring thereto as "Exhibit A;" and the said Board of Supervisors state that it cannot, without the members thereof being guilty of contempt and liable to punishment by a court of competent jurisdiction, comply with the requst of the relator, Marcus C. Riggs, to levy or collect the tax desired, or any part thereof.

Wherefore the said board says that the prayer of relator should not be granted, and that judgment should be rendered against him for costs.

GEO. J. BOAL,
Attorney for Defendant.

The relator demurred to this answer,

1. Because the relator was no party to the proceedings in the State court.

2. They were begun after his judgment was recovered.

3. Because after the judgment in the Federal court, the State court had no jurisdiction or authority by any judgment to which the relator was no party, to prevent the relator from using the process of this Court to collect his judgment, whether he was a party or not; and

4. Because an injunction from the State court, between the supervisors and tax-payers, to which the relator was no party, and begun after he obtained judgment, was no bar to the relief sought.

This demurrer was overruled, and this is the error assigned.

In the case of J. Edgar Thomson *vs.* Board of Supervisors of Henry County, and the same party *vs.* The City Council of the City of Keokuk, No. 247, which were actions of the same character, tried in the circuit court for the northern district of Illinois, the same answer or return was made to the writs, and a demurrer thereto overruled; and these cases are also pending in this Court.

There are a large number of similar actions pending in the United States circuit court for the district of Iowa, where the same defense is interposed by the board of supervisors of various counties, who have been enjoined from levying a tax to pay bonds issued by the county judges of these counties in subscription to various railway companies.

I. The defense in all of these cases grows out of the judgment of the supreme court of the State of Iowa holding such bonds to be invalid, and enjoining the officers of the several municipal corporations from levying a tax to pay them.

The decision of this cause involves many millions of dollars to the citizens of the State of Iowa and in the result of this trial, I need hardly say, they feel a profound and absorbing interest. In some cases bonds were issued in the name of the corporations, predicated upon the anticipated but unrealized future growth in population and wealth of the cities and counties, far beyond their power to pay them. And if this Court could, and should compel their payment, the result would be most disastrous to the prosperity of the State. The only difference in the cases is that in most of them the injunction was issued against, and served upon, the officers of the respective counties and cities, before any suit was brought in the Federal courts upon the bonds. In most instances the bonds were issued without the knowledge and consent, and against the protest, and in some cases, against the attempted legal prohibition, of the majority of the tax payers of the several municipalities.

In no single case have the supreme court of Iowa held these bonds to be valid by a unanimous court. It is true that in the first case tried before that tribunal they were held to be valid by the majority

of the court, and in some four subsequent cases the majority of the court felt bound to follow that case, at the same time declaring that, were the question presented on its merits, they would unhesitatingly hold that these counties and cities had no power under the constitution of that State to issue these bonds. By a long and unbroken course of decisions, without a dissenting voice, the highest court in the State have reversed their first rulings upon the questions involved, and have held, and now hold these obligations, issued in the name of these counties and cities, to be void and of no legal or binding force or effect. I refer to only a few of these cases: Stokes *vs.* Scott County, 10 Iowa R., 166; Burlington & Mo. R. R. Co., *vs.* Wappello County, 13 Iowa R. 388; Myers *vs.* Johnson Co., 14 Iowa R., 47; Rock *vs.* Wallace, 14 Iowa R., 593; McMillen *vs.* Boyles, 14 Iowa, 107; Ten Eyck *vs.* City of Keokuk, 15 Iowa, 486; Smith *vs.* Henry County, 15 Iowa, 385.

Many of these bonds are held by brokers and speculators who obtained them for a very insignificant consideration, and many of the counties have received no consideration whatever for their issue, and are still without the contemplated railroads.

For the purpose of avoiding the settled judgment of the highest court of the State, under whose laws these obligations were issued, and which, I respectfully and earnestly claim, should be a finality upon the question of their legality and validity, scores of these bondholders have sought in the Federal tribunals of that State, to compel their payment, notwithstanding the judgment of the State courts against their validity. This Court, in their wisdom, which I may not [illegible] call in question, have [illegible] to disregard the settled judgment of the State courts, and to follow the earlier rulings and majority decisions of the supreme court of that State, and in the cases of Gelpke *vs.* Dubuque, 1 Wallace, 175, 220, and Myer *vs.* Muscatine, 1 Wallace, 384, have held these obligations binding upon the several counties and cities in whose name they were issued.

Notwithstanding these decisions, the supreme court of Iowa, with respectful deference to the wisdom of this enlightened tribunal, but in the exercise of their unquestionable right and duty so to do, have continued to hold and treat these bonds as unauthorized and void, and upon a proper showing, made at the instance of the tax payers of the several counties; holding the bonds to be void, have issued writs of injunction, forever prohibiting the levy of a tax for their payment. Believing as they do upon the legal question involved, they could have done no less than they have done, unless they had felt it their duty to forswear their own solemn judgment, because this Court have pronounced an opposite judgment.

We are the persons, (not a corporation,) the individuals, upon whom this injunction has been served, and the plaintiffs in these cases seek to compel us to violate and disregard it. Shall we do it? Ought we? Can we be compelled to disregard it? We say we should not. We cannot. We did not seek to place ourselves in this

position. We were served with this writ without any procurement of ourselves. We were the *defendants* in these injunction suits, as we are in this.

II. I contend that we should not be commanded to do what the relator seeks to have us do.

But before entering upon the affirmative discussion, so to speak, of the questions involved, I wish first to examine, candidly and fairly, the argument and authorities which my learned opponents have given the Court in their brief, in support of their claim.

First, as to the authorities cited. Wayman *vs.* Southard, 10 Wheaton, 23; Kentucky *vs.* Dennison, 24 How., 97; Knox Co. *vs.* Aspinwall, 24 Howard, 376; Kendall *vs.* United States, 12 Peters, 614, touching the jurisdiction of the United States circuit court in mandamus, have no bearing upon the cases at bar, because we do not deny, that in the absence of legal restraint upon the action of respondents, they might be commanded by the writ of the Federal court to proceed to levy the tax to pay the judgment obtained therein.

Nor have I anything to say in answer to the claim of counsel, that the writ of mandamus is no longer, technically, a prerogative writ in this country; and while I might cite many of the most weighty authorities to the contrary of this proposition, yet, as it is beyond all dispute, a writ which can only issue on a proper case made before the court, and which the court can therefore order or withhold, I care nothing for the technical designation of the writ, but insist that it is in its very nature strictly a prerogative writ. I shall hereafter show that it is not only a prerogative writ, but the proceeding to secure it is nothing more nor less, nor other, than a suit in court.

The counsel for relator have also cited the following cases: McKim *vs.* Voorhies, 7, Cranch, 279. McKim, a citizen of Maryland, recovered judgment in ejectment *vs.* Voorhies, in United States circuit court for Kentucky. Voorhies then sued out a writ of injunction, from a circuit judge of the State, staying all further proceedings in United States court, until the case was heard on equity, &c. This Court simply held, in that case, that the State court had not the power or jurisdiction to enjoin a judgment of United States court, and that the writ of possession should issue.

Slocum *vs.* Mayberry, *et al.*, 2 Wheaton, 1, declares that a party in a State court cannot replevy a vessel out of the possession of a Federal officer and thereby obstruct the jurisdiction of the Federal court.

In Duncan *vs.* Darst, 1 Howard, 306; McNut *vs.* Bland, 2 Howard, 17, this Court simply held that a debtor taken under a *capias* of United States circuit court could not be discharged by the sheriff, under an order of a State insolvent court, and such a judgment of discharge could not be pleaded by the sheriff, as a bar to a suit by

the creditor, brought upon the official bond of the sheriff. In other words, the State court could not interfere and discharge a party held under process of the Federal court.

McClung *vs.* Silliman, 6 Wheaton, 548. In this case McClung, plaintiff and appellant, claiming pre-emption title to certain lands, sought by mandamus in the State court to compel a Register of United States Land Office to do the legal acts for the recognition and establishment of his title.

This Court held that the State court had not jurisdiction by mandamus thus to control the action of an officer of United States, and that the party had besides a sufficient legal remedy.

Phelan *vs.* Smith, 8 Cal., 521; Ricketts *vs.* Johnson, 8 Cal., 34. These were bills in equity to enjoin proceedings pending in United States circuit court. This Court held that a State court had no such power.

The celebrated case of Ableman and United States *vs.* Booth, 21 Howard, 516, cited by counsel, simply holds that State court has no authority to take a party out of the custody of a marshal of United States, who holds him under a law of United States and by a process of United States court.

The case of Morris *vs.* Hagle, 37 Illinois, 150, cited by counsel, would be in point, if, in the cases at bar, the respondents had not been served with process in the injunction proceedings. But they having been duly served, this case has no application.

In all these cases, except that brought on the sheriff's bond, the contest was between the party seeking to enjoin or restrain a writ of the Federal court, and the party in whose behalf the writ had been granted; and the several causes having come before this Court for review, this Court have announced that the State courts cannot interfere with the previously acquired jurisdiction of the United States courts; a doctrine so well established, so long recognized, and so fundamental, that I should not for a moment think of contesting it, and I am only surprised that, considering the relation of State and Federal courts, and the necessary powers of all courts of co-ordinate jurisdiction, this doctrine should ever have been questioned, as its recognition is absolutely essential to the jurisdiction, even to the existence of either court.

But the doctrine is just as well established, is just as fundamental, and has been as uniformly recognized by this Court, that the Federal courts cannot enjoin or in any manner interfere with the execution of, or obedience to, the writs of the State courts.

But need I argue that such is not the case at bar; that this is not the only question which this Court have now to determine?

These are not causes where one party is seeking to enjoin or restrain the writs of the Federal court and the other party is resisting the attempt.

The parties who obtained these writs against us are not before this Court. They were before the State court. So were we before the State court, which had entire jurisdiction and control of us, as is not disputed. This Court had and have no power to relieve us from their control, or from the operation of their writ.

They have said to us, "You shall not levy any tax to pay certain bonds." Their reason for ordering us to desist from acting, we are unable to question. Relators seek to compel us to violate that injunction.

This action of the State court may have been wrong, illegal, and unconscionable.

But this Court have repeatedly held, that they have no power over that court to modify their judgment or relieve us from its operation. Can they then compel us to disregard that judgment, which they cannot in any manner, repeal, reverse, or modify? I say not, and in this I believe I am sustained by all the authorities.

The Court will observe that counsel for relator, after the most diligent search for years, while these causes have been pending, have failed to produce a single case where this or any other court has done what they ask this Court to do now. But more upon this point hereafter.

I am unable to see the application of the following cases, to which counsel refer:

Kendall *vs.* United States, 12 Peters, 614; Winston *vs.* Westfeldt, 22 Alabama, 760; Howe *vs.* Hartross, 11 Ohio State, 446; 2 John Chy. R., 444; Bradley *vs.* Snyder, 14 Illinois, 263; Ogden *vs.* Saunders, 12 Wheaton, 255; 5 Massachusetts, 511; 10 Massachusetts, 337; 8 Pickering, 294; Shelby *vs.* Bacon, 10 Howard, 56; Smith *vs.* McIver, 9 Wheaton, 532, as we are not discussing the question of *lis pendens*, nor the effect of a discharge by a State insolvent law, nor the right of a party to redeem from mortgage sale, nor the sufficiency of a plea in bar, where one of the parties was not before the Court, in the cause where the judgment was obtained, which is sought to be plead in bar, which are the only questions discussed in these cases, and which, therefore, I will not allude to now at length. The citation of these authorities only convinces me that my learned opponents have mistaken the real issue which we have come here to try, which is one entirely different from that involved in any of the causes referred to by them.

III. Counsel then refer to many cases, such as Curran *vs.* Arkansas, 15 Howard, 319; Mathias *vs.* Cook, 31 Illinois, 83; State Bank of Ohio *vs.* Knoop, 16 Howard, 369; Jefferson Bank *vs.* Skelly, 1

Black, 436; Union Bank Tennessee *vs.* Jolly, 18 Howard, 331; Suydem *vs.* Brodnax, 14 Peters, 67; Dodge *vs.* Wolsey, 18 Howard, 331; Hyde *vs.* Stone, 20 Howard, 177, in support of a principle which we freely admit, viz., that no State can make any law invalidating an existing contract, nor can repeal or interfere with the remedy, so as to impair the obligation. A better case in support of this doctrine than any relator has cited, is the case of Hoffman *vs.* The City of Quincey, decided at this term of this Court, and the principle therein announced we are not disposed to question. But none of these cases touch the real issue before this Court now.

My learned brother has fallen into a grave error, when he assumes that the *statute of a State, and the judgment of a ~~competent tribunal of a~~ court of that State, upon a question arising under a law of that State, are to be treated alike by the Federal courts. Right here is the first grand fallacy in his argument*, and which utterly ignores the constitutional integrity of the State tribunals. But I shall refer to this more at length hereafter.

This Court at this term has decided, in the case of The Mississippi and Missouri Railroad Company *vs.* Rock, that it had no jurisdiction of that cause, *because* it involved no question of constitutional law upon which the Federal court could review the action of the State court. In other words, notwithstanding the judgment of the State court may have been wrong, and under the decision in Gelpke *vs.* Dubuque, was wrong, notwithstanding, it was such a judgment, that had it been a mere statutory enactment, this Court would have held it invalid and void, as impairing the obligation of the contract contained in the bond, yet, being a judgment of a court of concurrent jurisdiction with the Federal court, it was valid and unimpeachable by this Court; and this Court in that case say: "The whole case, in the language of the Brief, is put upon the ground 'that the supreme court of Iowa has made a decision which impairs the obligation of contracts;' and the argument goes upon the fundamental error that this Court can, as an appellate tribunal, reverse the decision of the State court, because that court may have held a contract to be void which this Court might hold to be valid. If this were the law, every case of a contract held by a State court not to be binding, for any cause whatever, might be brought to this Court for review; and we should thus become the court of final resort in all cases of contract, when the decision of the State courts were against the validity of the contract set up in the case. This, obviously, was not the object of the judiciary act. It *must be the constitution, or some law of the State*, which impairs the obligation of the contract, * * * * or the case for this Court does not arise." (Citing 14 Howard R., 149; 16 Peters R., 525.)

Yet this case of Rock *vs.* The Mississippi and Missouri Railroad Company involved the very question, of the binding force of the judgment of the State Court, in a suit to restrain the officers of the county from levying a tax, to pay bonds identically such as those

upon which the relator, Riggs, recovered the judgment, the collection of which he is thus seeking to enforce in this cause. This Court could not afford Rock relief now, even in a suit upon his bonds, and he would be barred by the judgment of the State court, he being a party to that suit, notwithstanding that, in the opinion of this Court, the effect of the judgment of the State court was to take away his only remedy for collecting his bonds, and thus impair their obligation; so that the argument that the decision of the State court is to be disregarded, because it impairs the obligation of the contract, is utterly untenable. The other ground urged, that it is to be disregarded because relator was not a party to the injunction suit, I will notice in due time.

In the administration of the powers of the Federal court, it is recognized as a fundamental principle, that the judgment of the State court is binding upon the Federal court, when the State court had jurisdiction of the parties and subject-matter, and the controversy arises out of a contract created under the laws of the State; and the Federal courts are powerless to reverse, modify, or in any manner interfere with such a judgment of the State court, and cannot relieve a party from obedience to a writ issued thereon.

In Corrydon *et al. vs.* Goodman & Bladsoe, 2 Black, 574, this Court have said, Chief Justice Taney delivering the opinion, "that a controversy, where no right is claimed under the Constitution and laws of the United States, is *exclusively* within the jurisdiction of the State court, and this Court has no appellate power over its judgments."

In Randall *vs.* Howard, 2 Black, 585, the Court say "The bill in this case brings in review various matters passed on in the progress of a suit by the Cecil county circuit court, a court of general jurisdiction, having complete control of the parties and subject-matter of controversy. It seeks to annul a sale of lands made by virtue of a decree of the Cecil court, sitting as a court of equity in a cause depending between these same parties, to affect the distribution of the proceeds of the sale, to enjoin the defendant from making any disposition of the lands purchased by him." * * * * "Has this Court jurisdiction. A conflict of jurisdiction is always to be avoided. Mr. Justice Grier, in Peck *vs.* Jenness, 7 Howard, 624, says that it is a doctrine too long established to require a citation of authorities, that where a court has jurisdiction it has a right to decide every question that occurs in the cause, and whether *its decision be correct or not*, its judgment, until reversed, is regarded as binding upon every other court. "These rules have their foundation not merely in comity, but in necessity; for if one may enjoin, the other may retort by injunction, and thus the parties be without remedy, *being liable to a process for contempt in the one, if they dare to proceed in the other.*"

In Lessee of Parish *vs.* Ferris *et als.*, 2 Black, 606, this Court say, "This Court acknowledges the rule, and has uniformly applied it, of the conclusiveness of a judgment of a court of concurrent juris-

diction between the same parties or their privies upon the same question.'

This Court are to regard this proceeding in the same light as if this were another court in the same State, of concurrent jurisdiction with the court by whose judgment and decree the respondents are enjoined from doing what the relator seeks to compel them to do. Where the State and Federal courts have concurrent jurisdiction, they bear the same relation to each other as the courts of the same State having concurrent jurisdiction, and are absolutely concluded by the decrees of each other.

In Mills *vs.* Duryee, 7 Cranch, 480, this Court, in speaking of the conclusiveness of the judgments of State courts upon the Federal courts, and of the act of Congress of May 26, 1790, chap. 11, giving them this effect, say: "We can perceive of no rational interpretation of the act of Congress, unless it declares a judgment conclusive when a court of the particular State where it is rendered would pronounce the same decision."

It has been frequently held that whichever court, State or Federal, first acquired jurisdiction can maintain it to the end, and the other cannot in any manner interfere, however illegal or wrongful may be the judgment of that court. (Freeman *vs.* Howe *et al.*, 20 How., 451.)

Persons, no less than property, in the custody of the law by the writ of a State court, are withdrawn from the effect of the process of the courts of the United States.

In the leading case of Taylor *vs.* Carryl, 20 Howard, page 583, Chief Justice Taney, in dissenting, says, on pages 607-8: "This Court, in deciding the case of Hogan *vs.* Lucas, (10 Peters, 400,) did nothing more than adhere to the rule which, I believe, is universally recognized by courts of justice; that is, that, between courts of concurrent jurisdiction, the court that first obtains possession of the controversy or the property in dispute must be allowed to dispose of it finally, without interference or interruption from the co-ordinate court. And this rule applies where the concurrent jurisdictions are two courts of the United States, or two courts of a State, or one of them the court of a State and the other a court of the United States. It was no new question when the case of Hogan *vs.* Lucas came before this Court, but an old and familiar one, upon which courts of concurrent jurisdiction have uniformly acted, in order to prevent indecorous and injurious conflicts between the courts in the administration of justice." The learned Chief Justice further says, on page 610: "I agree with the majority of my brethren, in regarding it *as among the first duties of every court of the United States carefully to avoid tresspassing upon the rights reserved to the States, or interfering with the process of their courts when they are exercising their exclusive or concurrent jurisdiction in the matter in controversy. And with the high trusts and powers confided by the Constitution to the Supreme Court, it is more especially its duty to abstain from all such interference itself, and to revise carefully the judgments of the inferior courts of the United States whenever that question arises, and to reverse them if they exceed their jurisdiction.*" * * * *

I have italicized the foregoing, from the opinion of Chief Justice

Taney, as in my judgment the language used is of great significance, and vitally applicable to the case at bar. Paine *vs.* Drew, 4 East., 523; see 20 Howard, page 595.

In *ex parte* Robinson, (6 McLean R., 363.) in which the learned Chief Justice of this Court was of counsel, Judge McLean says: "There is no instance, it is believed, where a Federal court has disregarded the decision of a State court, where it possesses no appellate power."

This Court have said, in Elliot *vs.* Piersol, 1 Peters, 328, "it is argued that the circuit court of the United States had no authority to question the jurisdiction of the county court of Woodford county, and that its proceedings were conclusive upon the matter, whether erroneous or not. We agree that if the county court had jurisdiction its decision would be conclusive," &c. In Stearns *vs.* United States, 2 Paine, C. C. R., 300, the court say "State courts are not inferior tribunals in the sense of the Constitution;" * * * and further, "The State courts may exercise jurisdiction in all cases authorized by the laws of the State and not prohibited by the exclusive jurisdiction of the Federal courts. Without express provision to the contrary, the State courts will retain a concurrent jurisdiction in all cases where they had jurisdiction originally over the subject-matter. It is, however, optional with the State courts to exercise such jurisdiction or not."

In the case of Rhoades & Snyder *vs.* Selin, 4 Wash. C. C. R., 715, the court say, "I take the rule to be clearly settled by the Duchess of Kingston's case; that when the matter adjudicated is by a court of peculiar and exclusive jurisdiction, and the same matter comes incidentally before another court, the sentence in the former is conclusive upon the latter as to the matter directly decided, not only between the same parties, *but against strangers, unless it can be impeached on the ground of fraud or collusion," which is not attempted in the cases at bar.* (Parker *vs.* Kane, 22 How. 1.)

In Leffingwell *vs.* Nassen, 2 Black, 599, this Court have said "The construction given to a State statute by the highest judicial tribunal of such a State is regarded as a part of the statute, and is as binding on the courts of the United States as is the text. If the highest judicial tribunal of the State adopt new views as to the proper construction of such a statute, and reverse its former decisions, this Court will follow the latest settled adjudications. (See also Shelby *vs.* Guy, 11 Wheat. 351; McClung *vs.* Silliman, 3 Peters, 270; Green *vs.* Neil's lessee, 6 Peters, 291; Ross *vs.* Duvall, 13 Peters, 45; Massingall *vs.* Downs, 1 How., 767; Nesmith *vs.* Sheldon, 1 How., 812; Van Ransalear *vs.* Kearney, 11 How., 297; Webster *vs.* Cooper, 14 How., 405; United States *vs.* Morrison, 4 Peters.)

"A controversy once decided by a competent tribunal cannot be re-examined by another court of concurrent jurisdiction," and in the case at bar this Court cannot relieve respondents from the judgment of the State court. (Lessee of Parish *vs.* Ferris, 2 Black, 606.)

This Court has never reviewed the judgment of an inferior court of a State, where there was an appeal to the supreme court of the

State upon a subject within the jurisdiction of that court. (Adams *vs.* Preston, 22 How., 473. Jetter *vs.* Jewett, 2 How., 352. Beauregard *vs.* City of New Orleans, 18 How., 497. Almonster *vs.* Kenton, 9 How., 1. Strader *vs.* Baldwin, 9 How., 261.)

In Metts *vs.* Brown, 16 Peters, 525, appeal from supreme court of Illinois, Chief Justice Taney, in delivering the opinion of the Court, says: "It is true that both plaintiffs and defendants have waived all objections to jurisdiction and have pressed the Court for a decision upon the principal points; but consent will not give jurisdiction, and we have therefore, on several occasions, said that when the acts of Congress had so carefully and cautiously restricted the jurisdiction conferred upon this Court over the judgments and decrees of State tribunals, it would ill become the Court to exercise it in a different spirit; and it certainly could not be justified in expressing an opinion, favorable or unfavorable, as to the correctness of this decree, *when it has not the power to affirm or reverse it.*"

IV. I submit that counsel beg the question when they contend, as they do, (and in this consists the other fallacy of their argument,) that if the injunction could not be pleaded in bar to a suit by the holder on the bonds, it is therefore no legal answer to a prayer for a writ of mandamus.

We have not claimed that the injunction could be pleaded in bar to the suit on the bonds, even had the bonds been issued by the respondents instead of by the county. Nor have we claimed that the State court had jurisdiction of the relator in the injunction suit, and that *therefore* he had no right to *ask* for a writ of mandamus to compel the levy of the tax. He may not be, and is not, estopped from *asking* the writ, for the reason that, not having been a party to the injunction suit, he is not barred by the judgment therein. He may have a perfect right to *ask* for the writ, and to have it, except for reasons not necessarily growing out of legal proceedings to which he was a party.

To show the untenableness of the position of counsel on this point, and in support of which the great burden of their argument is addressed, let us suppose that certain persons claiming to act for the county and under color of law, but without any legal authority, had executed bonds in the name of the county, and that these bonds were, therefore, utterly invalid, and not binding upon the county; that, nevertheless, they had been assigned to, and were held by, *bona fide* holders out of the State, over whom the State courts could obtain no jurisdiction whatever; suppose that these bonds are held by a large number of different parties whose names and whereabouts are unknown to the tax payers of the county; that the board of supervisors of the county are about to proceed to levy and collect a tax for the payment of them. Now the question is, *first*, cannot the State courts on proper showing, made by the tax payers of the county, issue their writ of injunction upon the several members of the board, restraining them from levying the contemplated tax? and *second*, are not these

members of the board to regard the writ, or may they answer, Your writ has no legal or binding effect upon us, because, forsooth, you have not ascertained the names and obtained jurisdiction of the persons, however numerous they may be, and wherever they may reside, whether citizens, non-residents, or aliens, who may perchance hold some of these bonds; and the only remedy of the tax payers is to wait until an indefinite number of now unknown persons shall bring an indefinite number and multiplicity of suits in the United States courts, (in order to keep out of the jurisdiction of the State courts,) upon these bonds, which United States courts may declare the bonds void; and this is your only remedy? No lawyer will say the supervisors could disregard the injunction for these or any other reasons they might assign, nor can the relator put such an answer into their mouth now. Yet the injunction would not be a good plea in bar to the suit by the bondholder.

But suppose, long after the injunction is served upon the board, one of the bondholders should recover a judgment by default in the United States Court against the county on one of these bonds, through neglect or omission of the county in defending the suit, and no excuse which equity will recognize could be given for this omission, so that the judgment might be set aside. The judgment is a verity, the holder seeks a *mandamus* to compel the levy of a tax by the board to pay it; the board answer, We are prohibited from levying the tax you seek. But he demurs to this answer, *because* he was not a party to the injunction suit, *because* the county as a corporation could not plead that suit in bar to his suit on the bonds, had the county not been defaulted in that suit. Although this supposed case differs from the one at bar as to the date of the injunction, and the cause of the judgment in the United States Court, it shows the fallacy of the argument that the respondents are not required to regard the writ of injunction, *because* the relator was not a party to that suit.

The Court had complete and unquestionable jurisdiction of the parties it has enjoined, and who make this answer, and they may not question the rightfulness of its action. They are not the county. They are not even a corporation. They are persons over whose action the district and supreme court of the State, in this matter, has entire control. They were in no way responsible for the issuing of the bonds, and were not a party to the suit against the county in which the judgment was obtained by relator.

V. There is no principle of law better settled, both in this Court and all of the courts of the country, than that mandamus will not lie to correct errors of inferior courts.

Even if this Court had appellate power over the State courts of Iowa, it could not by a mandamus revise any error of theirs in granting the injunction.

It is another elementary principle, no less firmly established in the practice of the courts, and in the use of the writ of mandamus, that it will never be granted by any court to direct an inferior court

how to act. It says to an inferior tribunal You shall act; but where judicial discretion is involved, it cannot be used to coerce the inferior court, in rendering a particular judgment. This can only be done upon appeal or writ of error. A superior court will not by a mandamus review the decision of an inferior court, or interfere with the execution of its process, even if the party has no other remedy. In *Ex parte* Ostrander, 1 Denio, 679, the supreme court of New York, in a case involving the action of the inferior court of common pleas in dismissing an appeal from a justice of the peace after the time for such a motion had elapsed, said, "The decision of the court at the September term, to entertain the motion and the order dismissing the appeal, were, in my opinion, in manifest violation of the provision of the statute, on that subject, notwithstanding the reservation in the rule of June term." By section 203 it is declared that no motion to dismiss an appeal shall be heard after the first term at which the same might have been made. The motion not only might have been made, but was in fact made and denied at the June term. The statute is imperative, and the court clearly erred in entertaining the motion at the succeeding term. It was virtually an attempt to enlarge the time fixed by statute to perform a particular act. This is a power which the court did not possess."

"The common pleas having decided otherwise, the important question arises whether this Court, in the due exercise of its jurisdiction over inferior tribunals, can correct the error by mandamus. It is argued that without the writ of this Court the party is remediless. It is not true that because a party has no legal remedy unless by this writ, that it will be granted for that cause. The common pleas had judicial cognizance of the subject-matter, and although I have no doubt but that it erred in its decision, yet it cannot be corrected by mandamus. It was clearly a judicial error." In *Ex parte* Koon, 1 Denio, 644, the same court, in the strongest terms, have again asserted the same doctrine, and hold, that however erroneous the action of the inferior tribunal, mandamus is not the remedy to correct it or defeat the effect of it, and if error will not lie, the party may be without remedy. (*Ex parte* Hoyt, 13 Peters, 279; Turner *vs.* Yates, 16 Howard, 14; State *vs.* Bowen, 6 Alabama, 511; *Ex parte* Gordon, 2 Hill, 363; Warren County *vs.* Daniel, 2 Bibb, 573; Fuller *vs.* Oneida Common Pleas, 21 Wendell, 20, 15 Barbour, 617; People *vs.* Tremain, 29 Barbour, 95. This Court have uniformly acted upon this doctrine.

Growing out of this principle as a necessary corollary and supported by the uniform current of authority and by reasons even more controlling is the doctrine that

VI. "A court will not issue a peremptory writ of mandamus to a person to do an act where it is doubtful whether he has the right by law to do such act or not." (People *vs.* Forquier, 1 Breese Illinois R., 68.

"A commissioner in chancery has no right to inquire whether an injunction issued against him was properly sued out, *but must* obey

its mandate, and a mandamus can only be issued to compel a party to act *when it was his duty to act without it.* (People *vs.* Gilmer, 5 Illinois R., 242.) This was a case of application for mandamus to compel a commissioner of the court to proceed and sell certain land he had been ordered to sell under a decree of the court. He answered that he had been enjoined by the court of chancery from selling, and the question was the same as in the cases at bar, viz., was this a sufficient answer? The supreme court of Illinois say, Chief Justice Caton delivering the opinion, that "the commissioner could not treat the injunction as a nullity, because it might have been imprudently issued. *He had no right to inquire whether a proper case was made for the injunction or not. Being subject to the jurisdiction and control of the court, he was bound to obey its order without further inquiry. As it was the duty of the commissioner to obey the injunction, we cannot compel him to violate it.* A mandamus can only be issued to compel a party to act when it was his duty to act without it. It confers upon him no new authority. We cannot look into the injunction bill to see whether a proper case was made or not. The orders made in that case are not before us for revision. We can neither reverse nor affirm them now. They must continue in force until they are vacated by the circuit court that issued them, or are reversed on appeal, or writ of error. * * * The application for a mandamus must be denied with costs against the relator."

VII. Far less will any court issue this writ to compel a party to do that which he has not the power to do.

In Hoxie *vs.* Co. Com. of Somerset, 25 Maine R., 333, the supreme court of Maine say: "A mandamus to an inferior court will not be granted, unless the petition alleges facts sufficient to show that the court has omitted a manifest duty. It must contain not only the affirmative allegations of proceedings necessary to entitle the party to the process prayed for, *but it must also be averred that other facts which would justify the commission complained of do not exist.*" This was an attempt by mandamus to compel the damages allowed for laying out a road to be paid. The commissioners are termed a court in the opinion referred to. So are the board of supervisors in this case the same kind of a court and in many matters possess judicial as well as ministerial powers.

In Bailey *vs.* Supervisors of Green County, 12 Barb., 217, being a petition for mandamus to compel the board to reassemble and ascertain and determine who was elected county judge, the supreme court of New York refused the writ and say "that before the writ will be granted it must appear that the defendants have it in their power to perform the duty required of them." (Gillespie *vs.* Wood, 4 Humphrey, 437; Ross *vs.* Lane, 3 Smede & Marshall, 695,) and in all such cases the writ has been refused.

A writ of mandamus will not be issued in a doubtful case. (*Ex parte* Prickett, 1st Spencer R., 134.)

This Court will not grant a *mandamus* except where it is clear that *there is a legal obligation to perform the duty commanded to be done.*"

(State *vs.* Jacobus, 2 Dutcher R., 135; Draper *vs.* Noteware, 7 Cal., 276.)

"Where the judge of an orphans' court is advised that an injunction has been granted against one of the parties to prevent the settlement of an estate in his court, it is a sufficient reason why he should suspend proceedings in that court; and an appellate court will not by *mandamus* pass upon the equity of the bill in chancery or the propriety of an order made thereupon; and a mandamus will not be granted to command an inferior tribunal to do that which it could not legally do without such mandate." Thus held the supreme court of Alabama in 15 Ala. (The heirs of Walker *vs.* The Judge of the Orphans' Court of Macon.)

In People *vs.* Supervisors of Winchester, mandamus to correct assessment of taxes, the court say, "This Court is intrusted with the power of the court of the King's Bench in England in granting writs of mandamus, and as to that court it is laid down that it is not obliged to issue the writ in all cases where it has the requisite power, but herein may exercise a discretionary power, as well in refusing as in granting it, as where the end of it is merely to try a private right, where the granting of it would be attended with manifest hardships and difficulties. If the relators have sustained a wrong for which they might be entitled to some remedy, the difficulties in the way of their obtaining the relief demanded by them appear to me to be insuperable. * * The assessment roll has passed from the jurisdiction of the board of supervisors. The rule is well settled, that a mandamus will not be granted where it would be unavailable for want of power in the defendants to perform the required duty. * * * There must be judgment for the defendants in each of these cases; but as there is no doubt that the relators have been excessively taxed, I shall not award costs."

In Otteman *vs.* The Com. of the Town of Seward, 27 Barb. R., 94, the court say, "The proceeding by mandamus to compel the commissioners of highways to open a road should not be resorted to when its necessary effect would be to subject the commissioners to an action for trespass."

The office of the writ of *mandamus* is to enforce the performance of official duty, and the officer cannot be commanded to do that which it was not lawful for him to do without such command.

Gillespie *vs.* Wood & Douglass, 4 Humph. R., 437. "It has been repeatedly held by this court that a mandamus will not lie to compel an officer to do an act which without its command it would not have been lawful for him to do." (Johnson *vs.* Lucas, 11 Humphrey, 306.)

VIII. The Court will not grant a writ of mandamus to compel a party to do an act which it is not in his power, legally, to do, or which will subject him to punishment by another court having jurisdiction of him, in obedience to whose writ he is acting; and this is a universal rule of all courts, and has been as uniformly recognized in England as in this country. In the case of The Queen against Sir

Gilbert, 10 Modern R., 48, Justice Eyre, speaking for the court, says: "No INSTANCE COULD BE PRODUCED where the courts have granted the writ, where obedience shall expose a man to trouble or inconvenience. Whereas, in this case, if Sir Gilbert obeys the mandamus, he will be liable to an action for false return to the court of alderman," he having returned to the court of alderman four certain persons as chosen at a wardmote, where four other persons were the persons actually chosen. Counsel replied that it was his own fault and he might suffer the consequence.

But Justice Eyre further says, "It must likewise be agreed that this court has a general jurisdiction in this matter and is to take care that public offices be discharged by persons duly elected, and that mandamuses have been the way whereby this power has been generally executed. I agree, therefore, that unless some *mandamus* will lie in this case there is no remedy. * * * * * *But it ought to be the concern of a court of justice to take care that while they are granting a remedy to one, they do not at the same time expose others to great inconveniences*, and likewise that the remedy be such as may prove effectual."

In the same case, Chief Justice Parker, after saying there was no doubt about the jurisdiction of the court, says: "As to Sir Gilbert, if he obey the writ he is subject to an action for a false return to the court of aldermen, *and no instance yet has been produced where obedience to a mandatory writ of this court exposes a man to an action.*"

In the Queen against The Justices of Middlesex, 1 Perry and Davidson's R., 402, mandamus to compel the justices to do certain acts quashing certain county rates returned.

Lord Chief Justice Denman, "I am anxious to see whether by making this rule absolute *we should be able to give protection to those parties* who had collected the rate in question. * * * * If we should order this mandamus to go we should expose the parties to an action *which must prevent us from making the rule absolute.*"

In the King against Dyer, 2 Adolphus & Ellis, application for a mandamus to compel the justices of Middlesex to issue a distress warrant, Lord Chief Justice Denman, speaking for the court of Kings' Bench, says, "Before we require the magistrate to exercise the power given him of issuing the warrant, we must see that the power exists beyond a doubt."

In the same case Justice Littledale says: "We must not issue this mandamus unless the case be quite clear, or unless it appear that there was caprice on the part of the magistrates, *or something at least to show that the refusal* was not *bona fide*. If they acted in good faith, it must be a very strong case to issue a mandamus. *The justices are not indemnified.* It is a pity that acts of Parliament like that in question do not contain a clause indemnifying magistrates for whatever they shall do in obedience to the mandate of this court. The court would then take upon itself to see whether the thing required were within the provisions of the act." In the same case, Williams, Justice: "It would be a dangerous step to grant this mandamus."

Federal courts will not interfere with proceedings in State courts. (Williams *vs.* Benedick, 8 How., 107; Wiswall *vs.* Sampson's Lessee, 14 How., 52; Peal *vs.* Phipps, 14 How., 372.)

VII. Far less will a court grant a mandamus to compel a man to do that which another court of co-ordinate power has enjoined him from doing. This follows necessarily and with greater reason from the authorities already referred to. The American authorities are as unanimously concurrent upon this subject as those in the English courts, and the contrary doctrine is not only utterly opposed to the whole tenor and spirit of the adjudications of this Court, as we have already seen, but carried out in reference to the action of State courts, would entail consequences most disastrous, and would be totally inimical to the harmonious administration of law by the Federal and State courts. In the language of this Court, if one may interfere and compel disobedience to the writs of the other, the other may retort, and thus hardship, oppression, and anarchy would prevail.

We have already referred to the case of the People *vs.* Gilman, in which the Sup. Court of Ill., (5 Gilman's Ill. Rep. 243,) have clearly announced the principle that no court will by a mandamus compel a man or officer of a court to do that which he has been enjoined from doing, however wrongfully, as he cannot help that.

In the New York Life and Fire Insurance Company *vs.* Adams, (9 Peters, 571,) this Court refused a mandamus to compel a marshal to levy upon property in the hands of a syndic, the debtor having become insolvent. In that case the foreclosure proceedings under which the marshal held the writ were instituted before the syndic obtained control of the property. The Court refused the writ of mandamus on the ground, among others, that it was not right "to compel the marshal to do that for the benefit of others which might involve him in litigation and possibly in damages."

This Court had no doubt but that the property was fully within the jurisdiction of the United States district court, and it was so stated by Mr. Justice McLean, but so anxious were the Court not to push an innocent officer into any possible difficulty, that it refused to order the marshal to proceed. If it was not right to grant the writ in that case, because the State court might insist upon its right to exercise jurisdiction over the property, and the creditors claiming it might sue him for damage, certainly this Court will not hesitate to refuse the writ in these cases, when it is ascertained that the certain result of granting it would be to subject the defendants, without any fault of theirs, to imprisonment for disobedience to the orders of one or the other of the courts.

In *ex parte* Fleming, 4 Hill, (N. Y.) Rep., 581. This is a case wherein the common pleas court of Onondaga county had decided to commit one Williams for fraud, under a certain statute of New York, and had, accordingly, rendered judgment of commitment; but before issuing the warrant of commitment the judge was enjoined from proceeding further by an injunction issued by the United States district court. Ap-

plication was made to the supreme court of New York for a mandamus to compel him to proceed, notwithstanding the injunction. If ever there was a case in which a court could say that another court had acted without authority, this is one: and yet the supreme court of New York refused the mandamus, and in the opinion, Judge Cowan says: "It is certainly impossible for me, on the case stated, to see expressly that the injunction was properly issued; but it is not my duty to inquire whether it was or not. I am not prepared to deny that under (some) circumstances it might have been properly issued, but if I were, it is enough to know that Judge Conkling has power to issue the process of injunction like any other chancellor. If it has been improperly issued, I am bound to suppose that he will set it aside on motion. He having jurisdiction, it is the same thing to me as if it had issued from the court of chancery of this State. Before I should be warranted in compelling a ministerial officer to disregard it, I must be satisfied, in the strong language of counsel, that the ordering of the writ was *a mere act of usurpation*, &c." And again: "I am, therefore, called upon to order the doing of an act by Judge Lawrence which would be in direct violation of a valid injunction, and subject him to punishment accordingly."

The rule, in the language of Judge Cowan in the opinion from which we are quoting, is:

"*No court ought to compel either parties or ministerial officers to put themselves in positive conflict with the order or writ of another court.*" * * * * "It would be very indiscreet to place the judge (Lawrence) between two fires, as we should do by granting this motion for a mandamus."

The Ohio and Indiana R. R. Co. *vs.* The Commissioners of Wyandotte county, 7 Ohio State Reports, 278. This was a case in which the people of Wyandotte county had voted to subscribe to the capital stock of said railroad company, and it became, therefore, by law, the duty of the board of commissioners to make such subscription. The suit was brought to obtain a mandamus to compel the board to make the subscription. The board answered, among other things, that they had been enjoined by the court of common pleas of Wyandotte county from making the subscription. It will be seen that the case is not unlike the one at bar. The mandamus was refused solely on the ground of the injunction, and this notwithstanding the railroad company was not a party to the injunction.

The court, in that case, say:

"If the peremptory writ of mandamus were issued, and the defendants failed to obey it, they would be liable to process for contempt; while on the other hand, if they obeyed it, they would be equally in contempt for disobedience to the decree of injunction. Even when the order or decree of injunction is made by a court of competent jurisdiction, other than that in which the mandamus is sought, the *latter will not thus place a party between* two fires by subjecting him to

contradictory orders." (See also Moses on Mandamus, pp. 19, 20; Tapping on Mandamus, p. 69.)

Where the principle is clearly laid down that if obedience to the writ will be attended with hardship or injustice, the courts will uniformly refuse a mandamus. (Queen *vs.* the Justices, 9 Adolphus and Ellis, 540; Lawrence *vs.* Hooker, 5 Bingham, 6.)

The case of Boswen *vs.* Irish Presbyterian Congregation of City of New York, the only case referred to by counsel for relator, is not at all analogous, was not mandamus at all, but was a case in chancery, where certain parties appealed from the order of the court below denying the defendant's motion for leave to file a supplemental answer, and from the decree of the court below. The supreme court had authorized the sale of the property in question, but afterwards a judge of that court granted an injunction *pendente lite* restraining the defendants from executing the deed. The court say "that the pendency of the suit in the supreme court could operate to bar the plaintiffs of their remedy in the present action, cannot be claimed unless the injunction granted there *pendente lite* was in effect a revocation of the order authorizing a sale to these plaintiffs. It was clearly no revocation; it only purported to restrain, for the time being, any action under that order." It could not be construed that a single judge of the same court granting the decree, intended to set aside the decree.

VIII. The Federal courts cannot relieve a party from obedience to the judgment of a State court having jurisdiction of his person; nor can they issue a *habeas corpus* to try the question of the legality of his commitment for disobedience to the writ of the State court.

In the celebrated case of *Ex parte* Dorr. (3 How., 103,) this Court said: "Neither the Supreme Court, nor any other court of the United States, can issue a *habeas corpus* to bring up a prisoner who is in custody under a sentence or execution of a State court for any other purpose than to be used as a witness, and it is immaterial whether the imprisonment be under a civil or criminal process." * * * "Dorr is in confinement under a sentence of the supreme court of Rhode Island, consequently this Court has no power to issue a *habeas corpus* to bring him before it." This case was decided subsequent to the "Force Bill" of 1833.

There is another case—*Ex parte* Cabrera, 1st Wash. C. C. R., 232, where the same question is more fully discussed.

This was a case where Cabrera, a secretary attached to the Spanish legation, for attempting to pass certain counterfeit checks in the city of Philadelphia, [redacted] with the consent of the Spanish minister was arrested under the criminal law of the State, and a *habeas corpus* was sued out of the circuit court of the United States to release him, on the ground that under the 26th section of the law entitled "An act for the punishment of certain crimes against the United States," which

declares that all process sued out in any of the United States or of any State, or by any judge or justice therein, against the person or effects of any public minister, or of his domestics, shall be deemed null and void, and that the person sueing out the same shall be punished with fine and imprisonment."

The Court said "that the law was no less obligatory upon the State than Federal courts. If a public minister be sued in United States courts, it is the duty of these courts to quash the process as altogether void. If he be sued in the State court, that court is equally bound to give the same decision. But where is the law that gives the circuit court of the United States a right to quash a writ sued out of a State court, and there depending against a public minister? If the United States circuit court can do it, why may not the district court do it? The law which must be our guide has given it to neither. *It is one thing to declare a process void, but another to define the tribunal which is to decide.* The natural tribunal is that where the process is pending, or which has the superintending control over such courts. * * * I apprehend that neither the State or Federal court can dictate to the other the conduct it shall pursue, or interfere in causes there pending, unless properly brought before it under the provisions of law." The court further held in the opinion by Judge Washington, that however illegal the detention, the Federal court could not relieve him. Judge Peters also gave a written opinion in which he condemns the proceedings against the petitioner as illegal and unwarrantable, but held that the court had not jurisdiction to relieve him as prayed.

Every court is the sole judge of the question of contempt growing out of disobedience to its writs, and if these respondents violate the injunction, this Court cannot try the question whether they have acted in contempt of the writ of the State court. (*Ex parte* Kearney, 7 Wheaton, 38; 3 McLean, 39; 3 Peters, 193; Hurd on *Habeas Corpus*, page 155, and the authorities referred to.)

But my learned opponents do not deny this position, this inevitable result of the mandate they ask. They seek to put us in that position, and then shut their eyes to our condition, and say "'it is none of our funeral.' We can help you; we want our money; and we want you to get it for us. The State court has no business to enjoin you; that is your lookout—not ours." Two of the Federal courts, four Federal judges, after a full argument of these causes, have said, without hesitation, we cannot, we shall not, utter this mandate, and we doubt not this Court will affirm their judgment.

In support of the position that this Court could not, by a proceeding in *habeas corpus*, try the question of the legality of the commitment of defendants for violating the writ of injunction of the State, I also refer to *ex parte* Tobias Watkins, 3 Peters, 193. I quote from the syllabus, which is fully sustained by the opinion:

"A judgment in its nature concludes the subject on which it is rendered, and pronounces the law of the case. A judgment of a court of record, whose jurisdiction is final, is as conclusive on all the world

as the judgment of this Court would be. It is as conclusive on this Court as on other courts. It puts an end to inquiry concerning the fact, by deciding it. With what propriety can this Court look into an indictment found in the circuit court of District of Columbia, and which has passed into judgment before that court? We have no power to examine the proceedings on a writ of error, and it would be strange if, under color of a writ of *habeas corpus* to liberate an individual from an unlawful imprisonment, the Court could substantially reverse a judgment which the law has put beyond its control. An imprisonment under a judgment cannot be unlawful, *unless that judgment is an absolute nullity, and it is not a nullity if the court has general jurisdiction of the subject*, although it should be erroneous."

In Johnson *vs.* The United States, (3 McLean's R., 89,) the court say:

"The court had jurisdiction of the offense, and if there was a bar under the statute it should have been pleaded. No such plea was interposed; and the question is whether the question can be raised on a writ of *habeas corpus*. We suppose it cannot. By failing to set up the defense the defendant waved it. *And if this were not the legal effect of failing to set up the statute*, it is clear that, on the *habeas corpus*, the court cannot look behind the sentence of the court when the jurisdiction is undoubted." X/1

X. As the important question in this cause is, which court first acquired jurisdiction, the further question arises, whether the jurisdiction of the Federal Court dates from the suit against the county on the bonds, or from the date of this suit in mandamus against the supervisors, and this depends upon whether the mandamus is to be regarded as an original suit. It may be an original suit, and I contend, is such, so far as the jurisdiction of this court is involved, over persons and property, and yet in its object and effect be merely ancillary to the suit against the county on the bonds, and in aid of that suit to make fruitful the judgment recovered therein. This I think is very clear. This Court at the last term, in the case of Buck *vs.* Colbah, (3 Wallace, 334,) held that marshal of the United States who was sued in a State court in trespass for levying upon certain property claimed by another party, could not defend himself by simply pleading that he acted under the writ of the Federal court, and this court on the question of jurisdiction commenting upon the doctrine laid down in Freeman against Howe, (24 Howard, 450,) and admitting the general doctrine therein maintained, go on to say: "But it is not true that a court having obtained jurisdiction of a subject-matter of a suit and of parties before it, thereby excludes all other courts from the right of deciding upon other matters having a close connection with those before the first court, and in some instances requiring the decision of the same questions exactly. In examining into the exclusive character of the jurisdiction of such cases *we must have regard to the nature of the remedies, the character of the relief sought, and the identity of the parties in the different suits* * * * The limitation of the rule must be much stronger and must be applicable under many more varying circumstances when persons not parties

to the first proceeding are prosecuting their own separate interests in other courts."

The proceeding in *mandamus* is not a process. It is a writ. (Note to 13 Wendell, 655.)

In Preston *vs.* City Council of Charleston, (2 Peters, 449,) this Court has said that the term *suit* is certainly a very comprehensive one, and is understood to apply to any proceeding in a court of justice in which an individual pursues that remedy in a court of justice which the law affords him.

The same thing was decided lately in the celebrated Milligan case.

In Dunn *vs.* Clark, (8 Peters, 1,) this Court held that if a judgment at law be recovered in a circuit court of the United States the defendant in the judgment may file a bill in that court to enjoin the judgment against the representative of the plaintiff in the judgment, though that representive be a citizen of the same State with the defendant in the judgment. But the Court say, "*if other parties are made in the bill, and different interests are involved*, it must be considered, to that extent at least, an original bill, and the jurisdiction of the circuit court must depend upon the citizenship of the parties."

In Kendall *vs.* Stokes, (3 How., on page 100,) the Court, by Chief Justice Taney, says: "The remedy in that form (mandamus) originally was not regarded as an action by the party, but as a prerogative writ, commanding the execution of an act when, otherwise, justice would be obstructed. * * * * *It is now regarded as an action* by the party on *whose relation it is granted*, but subject still to this restriction, that it cannot be granted to a party when the law allows him any other adequate means of redress. * * * * And to allow him to bring *another action*, for the very same cause, after he has obtained the benefit of the mandamus, would not only be harassing the defendant with *two suits* for the same thing, but would be inconsistent with the ground for which he asked for the mandamus." I say, then, that this is an original suit so far as this subject-matter and these parties are concerned.

It has often been decided that a proceeding in garnishment against a third party based upon a judgment against the debtor is an original proceeding, so that unless the garnishee be a citizen of another State than that of which the creditor is a party, the Federal courts have not jurisdiction. And although that proceeding in such a case is in one sense merely ancilliary to the judgment, yet, being a separate and peculiar remedy and against a third party, it is an original suit, notwithstanding the attachment is issued without the order of the court or judge. This has never been seriously questioned. For the same and much stronger reason, the summary and extraordinary proceeding of mandamus must be regarded as an original suit. (Drake on Attachment, Sec. 452, ed. of 1866. Tanstall *vs.* Worthington, Hempsted R., 662; 22 Ala., 831; 8 Ala., 574; 5 Ark., 55; 4 Sneed, 560; 1 Grant, 457; 14 Wisconsin, 22.)

In many of the States the proceeding by mandamus is not only begun by a petition or complaint and notice, but all of the proceed-

ings and pleadings are the same, precisely the same, in every particular as in any other action at law. Such is the case in the State of Iowa, (See Chance vs. Temple, 5 Iowa R.,) and as said by this court in the cases already cited, in modern practice it is nothing more nor less than an ordinary suit at law.

This is peculiarly and beyond all question the case when the proceeding is against third persons who were not a party to any other action with the relator, and where the relief sought is not simply to compel a defendant in a judgment to do some act, which by the judgment he is legally required to do, and the relief is purely ancillary to the judgment, or in aid of the rights of the plaintifis thereunder against the defendant.

In no court, under no circumstances, can this writ be granted, except in term time, and upon due notice to the party, *the very person* against whom it is sought. In this important regard it differs from the ordinary writ of execution incident to a judgment, and to which the creditor is entitled as of course. Beyond all question it is a writ which the court may grant or refuse to grant, depending upon the case made. The defendant in *mandamus* may demur to the information upon which it is sought, or move to quash the alternative writ, or the plaintiff may demur to or move to quash the answer or return of the respondent, as has been done in the cases at bar, and judgment is rendered thereon, as in any other cause. We call upon counsel to point out to this Court how, in any single feature or particular, a suit by *mandamus* in modern practice, differs from any other suit so as to authorize them to assume or conclude, that it is not simply a suit at law, though a suit which the court will not entertain when the party seeking it has other adequate remedy. They have produced no such authority or anything analogous to it by this or any other court. It would be utterly at variance with the whole history and spirit of this enlightened tribunal to court unnecessary conflict with the co-ordinate tribunals of the States, and in the face of all direct authority, and of controlling analogy, they will not seek such occasion by holding that these suits are not suits, even as to these respondents, and as to the peculiar relief sought, and that the jurisdiction of this Court over these defendants, who were not parties to the suits on the bonds against the several counties, and many of whom were not even citizens or residents of the counties or State when the suits on the bonds were brought, nevertheless, dates from the origin of the actions upon the bonds. The persons who would be affected by the writ in these cases are not even the same persons upon whom the demand of payment of the bonds, and the demand to levy the tax was made, but other persons have taken their place as members of the several boards of supervisors.

I submit, without comment, that there is nothing in the distinction attempted to be taken by counsel for relator, that the injunction only extends to the levy of a tax to pay bonds and coupons, and not to a judgment obtained on the bonds.

The judgment is merely the establishment of the obligation contained in the bonds and coupons. It would be trifling with the writ

of the State court to say that a party can avoid its effect by levying a tax to pay these identical bonds and coupons, because a court has said by its judgment that certain of these coupons belong to Marcus J. Riggs, and that there is so much due him thereon, and that he is entitled to the ordinary process of the court upon the judgment for their collection, and this is all the judgment says. The suit against the county simply tries the question of indebtedness of the county to him on so many of these coupons as were embraced in that suit, and the court adjudges a certain sum to be due him. Such a plea by the respondents would be a sorry excuse for violating the writ of injunction.

Further, the law under which the bonds were issued does not require the respondents to levy a tax to pay any judgments, but to pay the bonds and coupons, so that if the mere words of the act are to control, relator would have no right to demand the levy of a tax to pay his judgment at all, and the argument is against him after all rather than in his favor. But there is nothing in this apology for an argument and it is utterly unworthy the consideration of the Court.

"Since the statute of 9 Ann, chap. 20, sec. 2, a mandamus is in the nature of an *action*, special replecations and pleadings thereon being admitted, and costs awarded to either side that prevails." (Bacon's Abr., vol. 4, p. 523.)

But I contend further that even if this Court had obtained jurisdiction of the subject-matter at the date of the suit against the county on the bonds, and beyond all dispute it had not jurisdiction of these respondents, the defendants in this proceeding—and I submit, with all respect for my learned brothers, it is more than absurd, to say that this Court first acquired jurisdiction *of us personally, these defendants in this case*, or that it ever obtained jurisdiction of us until the alternative writ was served upon us. As already stated, we were not parties to the original suit, did not even know of its existence, were not even citizens of the State when it was brought. How then could we be parties to it? How in the name of common sense and our mother English could the court have had jurisdiction of us?

It is an axiom of the law that jurisdiction of the *person can only be obtained by personal service of the writ.* Is it pretended that any personal service was ever made upon us until this writ was served upon us? It is not even claimed or asserted by counsel, and yet they insist that the court had jurisdiction of us from the date of a suit about which we even knew nothing. We are compelled to conclude, then, that the jurisdiction of the court over us was acquired by the service of the alternative writ upon us, and not before. It is not disputed that before this writ was served upon us, before it was sued out or sought for by the relators, we had been served with the writ of injunction which we are compelled to obey.

It is no less clear that, notwithstanding that the object and effect of the writ of mandamus is to collect the judgment, and that in this respect it is ancillary to the judgment, yet the subject-matter of this

suit is entirely distinct from the subject-matter of the suit upon the bonds against the county. It did not at all follow that because the law provided for the levy of a tax to pay these bonds that the plaintiff in the other suit would ever seek this remedy. The agreement to pay the bonds and the agreement to levy a special tax to pay them, though contained in the same instrument, are separate and distinct undertakings, and it does not follow, and it could not be assumed, that the county would not pay the bonds upon judgment rendered, in the absence of any agreement in the bond to levy a special tax for that purpose. These counties might and probably would pay them were it in their power to do so, without such an agreement.

The agreement to levy the special tax was a guaranty that the bonds would be paid. It was an attempt to bind the property of the tax-payer as security for the payment of the obligation; but it did not follow that the relators would ever resort to or be compelled to resort to this security. It did not follow as a matter of course, that because the holder was entitled to a judgment that he was also entitled to this writ to make his security available, else why the necessity of any suit in *mandamus* against the property of the tax-payer, which is security for the payment of the bond? Why try the question at all as to relator's right to the writ? Does the Court, by rendering judgment on the bonds against the county, at the same time say or intend to say, to respondents that they shall levy the tax claimed? Innumerable questions might arise for the determination of a court, as to the right to levy the tax, on what property, to what amount authorized, and by whom to be levied, and when to be levied, and how collected, which *the Court alone, and in this suit alone*, could determine, and which could not possibly have been raised, tried, or determined in the suit against the county on the bonds. But, counsel answer this by saying all this is provided for in the bonds, or in the law under which they were issued. I reply, that in every case of contract, in every possible case that ever came before any court, it is contained in the instrument what the rights and remedies of the parties are.

But this does not prevent the necessity of a suit being brought, and the very object of all suits is to adjudicate upon the question what are the rights of the parties under the obligation or contract sued on. And this question is the *very thing which constitutes the subject-matter of a suit.* And I need not further argue that the subject-matter of these suits before this Court, is wholly different and distinct from the subject-matter before the court in the suit against the county on the bonds. It follows, then, that as to the subject-matter, and as to these parties, this Court only acquired jurisdiction by this proceeding, by this case, *by this suit*, for I insist that from the very nature of the thing, outside of and beyond all authority on the subject, it is nothing but an action, a suit, an original suit, as to its subject-matter, as to the question to be tried and determined by this Court, as well as to the parties defendant. Respondents might interpose innumerable defences against doing what relators asks, and this Court could not prejudge them and their cause by assuming that they had not, and

could not have any defence. If it did so, I submit with all respect, that it would no longer be a court, and would be disqualified to try or determine the cause.

But I go further, I say, and in this I claim that I am supported by all of the authorities on the subject, and to many of which I have already called the attention of the Court, that even if it is to be considered that the federal court did acquire jurisdiction of this suit by the institution of the suit upon the bonds against the county; and even if this Court should regard the action of the State court in enjoining these defendants from levying the tax sought as an unwarrantable interference with the proceeding in the United States circuit court; that notwithstanding this, still this Court should not and will not require these defendants to do an act which will subject them to punishment, harassment, or jeopardy; and I call upon my learned opponents to produce a single authority in the law, either in the text-books or the reported decisions of cases, where any court has ever ordered a peremptory writ of *mandamus*, thereby requiring an innocent party to do an act by which he will or may, suffer punishment or even inconvenience. They have sought carefully,

—as I know—for such authority and have found none; I have found none. I feel assured that even this enlightened tribunal, with all the wisdom and learning for which they are so justly eminent, are cognizant of no such authority among the books of the law. The learned Chief Justice of the Court of the King's Bench of England has said, there is no such case on record; however wrongfully the court may have acted, whose writ is sought to be disregarded. That court, adorned by ages of inherited learning and the accumulated wisdom of the most illustrious sages, inferior in enlightenment only to the eminent jurists who preside in the highest tribunal of our own country, whose judgments are not only the law of this nation but of the civilized world: have said they would not be the first to establish such a precedent, to pronounce a judgment so repugnant to justice. I do not fear that this Court, for much more controlling considerations, not merely personal to the parties before them, and growing out of the private interests involved, but considerations of the highest political character, and of the gravest public significance; which may not and cannot terminate here, but which must, for all time to come, affect the peace and harmony of our complicated federal system of government, legislative and judicial—I say I do not fear, for considerations, such as these, beyond the naked legal rights of these respondents, that this Court will be the first to establish a precedent so pregnant with discord and disaster. I know that, rather imbued with the spirit, they will adopt the language of the late lamented Chief Justice in the case of Taylor *vs.* Carryl, (20 Howard, page 610:) "*I agree with the majority of my brethren in regarding as among the first duties of every court of the United States carefully to avoid trespassing upon the rights reserved to the States, or interfering with the process of their courts when they are exercising their exclusive or concurrent jurisdiction in the matter in controversy; and with the high trusts and powers confided by the Con-*

stitution to the Supreme Court, it is more especially its duty to abstain from all interference itself, and to revise carefully the judgments of the inferior courts of the United States, whenever that question arises, and to reverse them if they exceed their jurisdiction."

To return for a moment to the subject-matter of this proceeding as showing that it is in its very nature and of necessity a suit, as much so, as any other proceeding in a court. Counsel are misled by the mere name of the proceeding, because it is called a *mandamus*, a command, because it is a mere writ that is sought. But the granting of the writ presupposes the *judgment of the court*, as much as in any other case; that *the plaintiff is entitled to the writ*, otherwise the court will by its judgment in refusing the writ, decide that the party is not entitled to it. No judgment is of any avail without some kind of a writ to carry it out, and the trial in an action of debt is simply to ascertain whether plaintiff is entitled to a *writ*, to a writ of execution by which to make his money. We should not therefore be misled by the fact that it is a writ that is sought for, simply a command of the court.

But further, it does not follow that because the object of this suit is simply to make fruitful the judgment against the county, that therefore it must be regarded as a part of the same proceeding. A judgment creditor may resort to various different methods of making effectual his judgment. He may proceed in chancery by a creditor's bill against third parties, and this Court have already held directly on the question of jurisdiction, that as to those third parties, such a proceeding, notwithstanding its admitted purpose, would be an original suit as to those new parties.

Dunn *vs.* Clarke, 8 Peters, 1, and the same doctrine is clearly and unequivocally laid down Buck *vs.* Colbah, 3 Wallace, 334.

Take the case of a note and mortgage. In most of the States the holder of the note may sue on the law side of the court and recover judgment on his demand and issue a general execution against any property of the debtor, real or personal. If he cannot thus make his money, he may proceed on the equity side of the court, and forclose his mortgage to reach the particular property pledged as security for the payment of his debt, and in doing so he may be required to make new parties, the trustee named in the mortgage, if one, or subsequent incumbrances, in order to obtain an unincumbered estate upon judicial sale of the premises. Yet, who will say that such a proceeding would not be a new suit as to these new parties? This Court have said that it is a new suit as to them, in Dunn *vs.* Clark. No court could possibly otherwise adjudge. Now, counsel for relator say that these bonds and the obligation to levy the special tax was in effect a mortgage. They have so set forth in the information upon which they prayed the alternative writ. They have brought their suit against the county on the bond or note, but failed to make the money out of other property, and are now in effect foreclosing their so-called mortgage. To do this, they have to make new parties, and their case, on their own showing and upon the most favorable statement, comes within the reason and authority of Dunn *vs.* Clark. But further, it is an utter disregard of all legal

phraseology, to say that the suit to foreclose a mortgage is even the same subject-matter, as a suit on the bond to establish the debt. In many of the States these suits are brought in the same court. It would be idle to say that one could be pleaded in bar of the other."

The principle for which I contend, that a court could obtain jurisdiction of these respondents only by personal service upon *them*, has been often decided by this Court. (Tolland *vs.* Sprague, 12 Peters 300; Boswell's, Lessee *vs.* Otis, 9 How., 336; Herndon *vs.* Ridgway, 17 How., 424.) And that where new parties are before the Court, whatever be the character of the proceeding as to other parties against whom judgment has been obtained, yet as to the new parties it is a new suit. In addition to the authorities already referred to, I may cite the case of Crouse *vs.* Stead, 4 D., 22.

Further, if the theory of plaintiff be correct, that the injunction suit having been a proceeding *inter alios actos*, therefore the plaintiff is not affected by it, and is not precluded from obtaining the remedy he now seeks, it would follow, that in no case could the courts of the State render a valid decree against the Board of Supervisors, to prevent them from levying a tax upon the property of the citizen, upon any ground whatever, because of outstanding county warrants, or other obligations of indebtedness held by persons unknown to the tax payer, who might not be within the jurisdiction of the State courts; as they are directly interested in the question. Suppose by the constitution or law of the State, the county were limited to levying a tax of one per cent. but being indebted, on outstanding county warrants, as shown by the books of the county, the proper officer should attempt to levy a tax greater than one per cent. to be paid into the treasury of the county, and to be applied to the payment of the general indebtedness of the county, as the county scrip might thereafter be presented for payment; and suppose an injunction against such an illegal attempt at taxation should be obtained on the prayer of the tax payers of the county. If the scrip holder should then seek by mandamus, either with or without a judgment first obtained, to compel the levy of such a tax, could not the county officers answer, not only that they had no power to levy a tax of over one per cent. which they had already done, but also that they had been enjoined from levying a greater tax; and would not this answer be a good defence to a peremptory writ of mandamus to compel the levy of an additional tax? The Court had entire jurisdiction of the only necessary parties, and of the subject-matter; and although the injunction suit and judgment could not be plead in bar to the mandamus, it would be a good reason for not proceeding.

The laws of Iowa, Sec. 2,763, of Revision of 1860, directly authorize a suit of this nature to be brought, in which one or more citizens may sue for all others interested in the question. If the courts of the State could not interfere to prevent the illegal levy of a tax, without having before it every man who held a dollar of county indebtedness, the citizen and tax payer would be utterly powerless, however clearly and unquestionably illegal might be the attempted

levy complained of. We have not claimed that by this injunction the question of the levy of the tax, is as to the bondholder *res adjudicata*, and such a plea could not be predicated upon that decree. But none the less is he precluded from having the particular remedy he demands. It interposes the jurisdiction of the State court, between this Court and the respondents, as to this particular remedy; and further, and conclusively, it effectually ties the hand of the respondents. *But if this proceeding had been first instituted, and this Court had first acquired jurisdiction of these defendants, now before this Court, and of this subject-matter, by the service of the writ upon them, then they would have been protected against the action of injunction in the State court, and could have set up the judgment and writ in this case, as a bar to that suit and, the mandate of this Court would have been a good defence against the injunction suit, because this Court would then have first acquired jurisdiction of the defendants.* But just the reverse of this is the case now. They could not set up the judgment on the bonds as a plea in bar to the injunction suit. It lacks the two essential elements of a plea in bar, to-wit: identity of subject-matter and of parties.

The purpose of the injunction suit was to try the legality of the threatened levy of the tax, and it makes no difference whether the claim of illegality rested upon the alleged illegality of the bonds, or upon some other and different ground. The right of the State court to try the question, and the binding effect of its decree, cannot be called in question now, either by these defendants or by this Court. If the State court had gone further and annuled the bonds, that part of their decree would be void as to the relator as a bondholder; being a judgment against him *coram non judice;* but so much of the decree as forbids us from levying a tax is a valid decree, and is not *coram non judice*, we and the subject-matter in question having both been regularly before the Court.

X. But suppose this Court should disregard this decree which they are powerless to set aside or amend. Suppose they should demand of us to do that which they cannot do themselves, nor protect us in doing. What is the necessary and inevitable consequence? These respondents have no reason to suppose that the State courts will not vindicate their authority and jurisdiction over them. They know full well to the contrary. They have the best reason for knowing that if they take a single step in violation of the writ of injunction, in contempt of that court, under whatever authority they may claim to act, that they will be at once arrested for contempt, and made to suffer such penalty as the State court may impose. Can this Court then interpose in their behalf, and still accomplish the purpose of the writ of mandamus? I submit, and most earnestly contend, that it cannot. We have already seen, from the authorities cited, that this Court possesses no such power. That even a writ of error does not lie from this Court to re-examine the judgment of a United States court on a writ of *habeas corpus*, far less to relieve a party from the

consequences of contempt of a co-ordinate court. (Barney *vs.* Mercier, 5 How., 103; Ex parte Kearney, 7 Wheat, 38; Ex parte Metzger, 5 How., 176; Ex parte Dow, Ex parte Cabrera, and other cases already referred to.)

But let us suppose further, that this Court should nevertheless conclude that they had the power to relieve us from arrest, and should issue their writ of *habeas corpus* and bring us before them, and, overruling every objection, should insist upon the return to that writ, of trying the question of the legality of our commitment for contempt of the State court, and should go still further and decide that we were not in contempt of any valid writ of that court, and should order our discharge, and we being once more at liberty, should proceed again to levy the tax claimed—what is the result? Does the relator accomplish the purpose of this suit? By no means. We are again liable to arrest if we proceed, and beyond all question we would be again arrested and committed for another violation of the writ of the State court, for another contempt of the State tribunal, and the same proceeding would be again gone through and repeated indefinitely; and thus, whichever court might be in the right, we would be the innocent victims of their conflict and disagreement, without hope of final remedy until one court or the other, in utter commiseration of our condition, should desist from enforcing its authority, or until the armed power of the Government should be called upon for our protection. But have this Court the right to invoke armed intervention in our behalf, to defeat and set aside the decree of a State court of co-ordinate power and jurisdiction? I submit they have not. Nor do I fear that they will render such a judgment as shall entail consequences so disastrous, and which after all cannot result in accomplishing the purpose for which it is invoked. Or can this Court say to a court of concurrent jurisdiction and of perfect equality of power, so far as this proceeding is concerned, You shall not arrest these respondents for disregarding your writ at our command? Far from it. Have they any power or control whatever over the courts of the State in such a case? Not the slightest, as is conceded upon all hands.

Beyond dispute, and as this Court have often themselves determined that in proceedings such as this the Federal courts have no power, jurisdiction, or authority, except such as Congress, under the Constitution, has chosen to confer upon them. Has Congress reared any lofty Olympus for the Federal Court of Iowa, whence it may pronounce its oracular decrees to the independent forums of the State, and waiving the wand of ubiquitous authority, dictate law and demand submission? While yielding to no one in just admiration of that tribunal, I utterly deny this claim, which it has been the first to repudiate. But it is upon this false theory of the relative powers of the State and Federal judiciary, that the learned counsel for the relator have here sought the intervention of the Federal courts to aid them in defying the judgment of the State tribunals. I assert without hesitation, that the judgment of the most puny

justice of the peace in all the realm, exercising the functions of his office conferred upon him by the laws of the State, and having final jurisdiction of the parties and the subject-matter, is beyond the reach of question even by this august tribunal, and in saying this I but reiterate its repeated declarations. Counsel have fallen into the grave error of assuming that because the Federal Constitution makes that instrument, and the laws and treaties made in pursuance thereof, the supreme law of the land, anything in the constitution or laws of any State, to the contrary notwithstanding; that therefore the judgments and decrees of the several Federal courts upon any and every conceivable subject are also the supreme law of the land; and not only this, but that they have under the Constitution a controlling power and authority over the courts of the State. There is not the slightest foundation for such a claim, and it is simply absurd, and I will not stop further to refute it.

In one of the arguments before me, counsel have attempted to attach odium to the conduct of the courts of the State of Iowa, as indicated by their action in granting the writs, which the relator now seeks to disregard; and to excite prejudice in the mind of this Court against the supreme tribunal of that State. To this I have only to say, That State, the courts of that State, the supreme court of that State, need no vindication of their loyalty to law, order, and justice. Their record is beyond impeachment or question. They stand in no attitude of contumacy or rebellion; they have neither exercised nor sought to exercise any powers but those conferred upon them by the highest legislative authority. If they had the right to grant the writ complained of, they certainly have no less the right to compel obedience to it; and while exercising this right, they must continue to deny, that upon them rests the responsibility of the unseemly conflict.

When I hear the loyalty of that tribunal to law and justice called in question, or their judgments characterized as a "phantom," which this Court may not hesitate to encounter with impunity, there instinctively arises before my mind a picture—one of the historical pictures of the late bloody struggle for liberty and law, in which loyalty triumphed over revolt and treason. Early on a summer morning now nearly six years ago, in the very morning of that dire conflict, as I wandered about the camp of a little army of citizen soldiers, who had been suddenly called out to repel an anticipated attack of the enemy, the sentinel was pacing his weary rounds and the little army were resting after the march and skirmish of the preceding day, preparatory to renewing the battle upon that day. Among the sleeping forms I recognized one after another familiar face, till at length near the outskirts of the camp, (for they had no tents,) lying at the root of an old oak tree, in his citizen clothes, with his musket by his side, with no covering but the canopy of heaven, I came upon the venerable form of the Chief Justice of Iowa. As I stood and gazed in admiration, I said to myself. Here is a picture worthy of a Phidias. Here is the high priest of justice in

the camp of war. Here is loyalty and patriotism of which this State may well be proud. *And there was the judge who pronounced the judgment of that court, which counsel would now have this Court disregard as rebellious!*

There is not one of these corporations against whom judgment has been obtained that is not willing to make a fair and honorable compromise with their bondholding creditors and to pay to the extent of their ability. But a few of these creditors upon the advice of counsel, that the United States Courts would coerce the State courts into submission, would set at naught their decrees and defy their puny authority and would compel the payment of the bond in the very pound of flesh, repudiating all offers of compromise or concession, have come up here demanding the fulfillment of the letter of the bond. *They* stand in no attitude which should enlist the sympathy of this Court in their behalf. *They* present no peculiar claims for commiseration, and have no better claim, in equity and morals, than in law, for demanding the reversal of the judgment below. That judgment should be affirmed.

There is no necessary conflict of jurisdiction; there should be none.

1. These are courts of concurrent jurisdiction. The one which first acquired jurisdiction will retain it to the end.

2. The jurisdiction of the Federal court over these defendants and this subject-matter was acquired by the service of the alternate writ of mandamus upon them, which was subsequent to the writ of injunction.

3. Without regard to the date of the jurisdiction of the respective courts, this Court will not grant a peremptory writ of mandamus commanding respondents to violate or disregard the writ of the State court and thus subject them to punishment or peril. I submit these propositions are amply sustained by the authorities referred, no less than upon principle and sound reason.

I cannot close without an apology to the Court for the length of this argument. But residing, as I do in the theatre of conflict, among the people who are to be affected by the judgment of this Court in these proceedings, and unavoidably sharing the profound and sensitive interest which they feel in the final determination of this controversy; conscious of the disastrous consequences upon the prosperity of that State, of an adverse decision, and deeply impressed with the responsibility of my position, as their advocate, and with the very justice of their defense, I could not forbear to try to impress upon this Court, with even what may seem unnecessary length and prolixity, my views of the legal questions involved.

Respectfully submitted.

HENRY STRONG,
Attorney for Respondents.

Dec 7. 67 Nr 42

SUPREME COURT

OF THE

UNITED STATES.

MARCUS C. RIGGS, Plaintiff in Frror,

vs.

THE BOARD OF SUPERVISORS OF THE COUNTY OF JOHNSON,
Defendants in Error.

ARGUMENT FOR DEFENDANTS IN ERROR

BY

FAIRALL & BOAL.

SUPREME COURT OF THE UNITED STATES.

MARCUS C. RIGGS, Plaintiff in Error.

vs.

THE BOARD OF SUPERVISORS OF THE COUNTY OF JOHNSON, Defendant in Error.

FROM THE DISTRICT OF IOWA.

The case briefly stated is as follows: Marcus C. Riggs filed his information setting forth that Johnson County in 1853 issued to the Lyons Iowa Central Rail Road Company, bonds amounting to fifty thousand Dollars, payable on the 1st of June, 1853, with interest coupons on said bonds at the rate of 7 per cent and payable semi-annually, each succeseive year after the issue until the maturity of said bonds. That on the 12th day of May, 1864, he recovered judgment on some of said coupons to the amount of $5,186,26. That execution had been issued on said judgment and returned, no property found. That about $36,000 of interest on said bonds was then due and unpaid, and asking a Mandamus to the Board of Supervisors of the county of Johnson commanding them to levy in addition to their usual taxes, a ax, sufficent to pay the interest then due—and annually thereafter as it matured, and ultimately the bonds.

The return of the Board of Supervisors to the alternative writ, among other reasons, why a peremptory writ should not issue, set forth, that, in a proceeding in the State court in the County of Johnson instituted by one Charles H. Berryhill for himself and other citizens of Johnson county to which said Board of Supervisors were, upon due process, made defendants, a decree had been rendered against the said Board and their successors in office, forever enjoining them from levying, or

proceeding to levy, or collect any tax to pay any of the coupons to said bonds, or the bonds themselves, and that the decree still remained in full force.

To this return the relator demurred, in substance as follows:

1st. Because the relator was no party to the proceeding in the State Court.

2nd. Because the proceedings in the State Court were begun, and the decree rendered, after the judgment had been rendered on part of the coupons included in this proceeding.

3rd Because the State Court had no jurisdiction to prevent the relator from using the process of this court by writ of mandamus, to collect his judgment.

4th. Because said decree was no bar to the relief sought.

The Court overruled the demurrer.

ARGUMENT FOR DEFENDANT IN ERROR.

The questions arising in this case are not numerous, and may be presented within the legitimate scope of the following propositions.

First. In questions such as presented in this case, the Federal and State Courts have concurrent jurisdiction.

Second. In Courts of concurrent jurisdiction the decree and judgment of that court first obtaining jurisdiction, shall take precedence.

Third. A proceeding by Mandamus is an ordinary action independent and not an auxilliary proceeding.

Fourth. One Court will not require a party to a proceeding therin to do an act in violation of the order of another Court and which would subject him to punishment therein.

1st. The first proposition is elementary.

In Kents commentaries 1st 436, we are told "that the circuit court of the United States are vested with *original cogni-*

zance concurrent with the Courts of the several States in all suits of a civil nature at common law or in Equity when the matter in dispute exceeds five hundred dollars and the United States are plaintiffs or an alien is a party and the suit is between a citizen of the State where the suit is brought, and a citizen of an other State.' The above concise definition of the jurisdiction of this branch of the Federal Court sustains the proposition, The power creating this Court, defines the limits of its jurisdiction.

2nd. This Court in the case, of

Shelby v. Bacon et al. 10th How. 56, say ; 'That there is no principle better settled than that where two or more tribunals have a concurrent jurisdiction over the same subject matter and the parties a suit commenced in any one of them may be pleaded in abatement to an action for the same cause in any other." Hence the pendency of a suit upon the subject matter, in controversy in the State Court having as it does a concurrent jurisdiction with the Federal Courts, might be pleaded in abatement of a similar controversy in the latter ; that court which first acquires jurisdiction retaining it throughout, and as a consequence, the judgment of the former may be pleaded in bar to an action in the latter. We are met inthe application of the authority cited to this ,case by the objection that while the subject matter is the same, yet the parties are not the same ; however true this may be the principle involved in the case cited does apply. The power to levy and collect taxes is vested in the Board of Supervisors, and the levy and collection of the taxes is the end to be attained by the relator and the levy and collection of the taxes theend to be defeated by the camplainant in the proceeding in the State Court ; neither is the complainant in the State Courta necessary party to the proceeding commenced by the relator in the

Federal Court, nor the Relator to that of complainant in the State Court, that either may have the relief sought in his respective action. The important party is the Board of Supervisors, and a judgment in either Court if pleaded is a perfect bar to a contra—action instituted, upon the same subject matter. The relief in one case is prohibitory and that sought in the other mandatory on the same subject matter; the former obtained, before the latter has been applied for, before it had an existence which the Board *could*, and much less were bound to assert as against the action for the former. It follows then, that in Court of *concurrent* jurisdiction, *that* court which first acquires jurisdiction retains it throughout, hence the data of the several proceedings or actions out of which this conflict grows, become material.

3rd. The information in this case was filed by the relator some months subsequent to the rendition of the judgment in the State Court, and this is important in presenting the proposition or theory of this case; that is, that a proceeding by mandamus is an action, an ordinary action between the parties. An independent proceeding based of necessity upon the exigency which gives rise to it, as an action in assumpsit is based upon a *promise*, yet as a proceedings in Court independent of all former or other *actions*.

It was formerly a *prerogative* writ.

But in America, *Moses on Mandamus*. p. 17.

The author says, "The authority to issue the writ of mandamus does not exist as a prerogative power of the Courts but is derived by grant from the government through the constitution or legislature enactments, and when the power has been granted in general terms to a court it is to be governed by the common law rules as to when it is proper to be issued."

*C*iting Kentucky v. Dennison, 24 How. Rep. 66.

In the matter of James Turner 5th O. R. 543.

In Kendall v. Stokes 3 How. 87, this Court says, "That mandamus originally, was not regarded as an *action* by the party but as a prerogative writ, commanding the execution of act, where otherwise justice would be obstructed. It is now regarded as an *action* by the party, on whose relation it is granted, but subject still to this restriction, that it cannot be granted to a party when the case affords him, any other adequate means of redress."

The *C*ourt say farther in this opinion.

"Such was obviously the meaning of the Supreme *C*ourt in the opinion delivered in the former suit between these parties where they speak of the *action* in the case, and give him the *Mandamus* because the other *form of action* was in adequate to redress the injury."

And speaking of the nature, and character of a Mandamus, we further quote the following from the opinion in the case.

"Mandamus is an *action* or *suit* brought in a Court of justice asserting a right and prosecuted according to the forms of Judicial proceeding."

This *C*ourt hitherto has not hesitated to declare, the proceeding by Mandamus an action, a new proceeding prosecuted and conducted according to the forms of conducting ordinary actions, not granted in all cases as matter of course, but when asked for *granted*, not as an ordinary and usual step in enforceing the jurisdiction of the *C*ourt rendering the judgment, but granted and entertained as a new proceeding, to enable the judgment creditor to collect his judgment when all the ordinary forms and means of redress or remedies are in adequate like a creditors bill, the means employed the remedy adopted is extraordinary.

Exparte Crane 5th Peters 190.

"A mandamus to an officer, is held to be the exercise of *Original jurisdiction*." In entertaining the information for mandamus in this case, over thirty thousand dollars of the subject matter is for the first time presented to the Court; and conceeding for the argument, the logic of counsel for relator it can only be applied to so much of the claim as is in judgment.

In the case of Wayman v. Southard, 10 Wheaton, p. 1, relied on by relator.

The Court say; "The the jurisdiction of the Court is not exhausted by the rendition of its judgment but continues until that judgment is satisfied." This language as shown by the context of the opinion, refers to the enforcement of payment by execution, or process which may be invoked by the judgment creditor, and had as a matter of course, growing out of the judgment rendered, generally provided by statute. That this is the reasoning of the authority cited, is plain, from the fact that more than this would be dicta, the issue before the Court being the power of the United States Courts, under the 14th section of the Judiciary Act to issue executions. The ordinary mode of enforcing the jurisdiction of a Court, of compelling payment of its judgments, is by execution. But, if means other than the process, provided by act of Congress—or by state legislation, and made a necessary and general means to enforce payment, are sought if; the creditor wishes to avail himself of the *unusual*, or *extraordinary* means provided, and without which justice must in many instances fail in its purposes, a new proceeding must be instituted based upon the entire absence of a *legal* remedy, and may be instituted in many instances in another jurisdiction, than the one rendering the judgment.

4th. One Court will not require a party to an action therein

to violate the injunction of another Court of concurrent jurisdiction.

"Althonght the power to issue a mandamus, is not in America, regarded as a prerogative power, yet the writ so far partakes of the nature of a prerogative writ, that the Court has power to issue or withold it according to discretion, and if issued it would maintestly be attended with hardship and difficulties, the Court may and even *should* refuse it."

Moses on Mandamus p. 18.

See also Exparte, Fleming and another 4 Hill 381

In the case cited, the Court granting the injunction did not have before it the parties applying for the mandamus, the parties to the proceeding for the injunction, were as essentially different from those applying for the mandamus as those in the case at the bar, yet the Court denied the writ for the reason that such order would subject the person against whom the writ was directed, to "*hardship and difficulty.*"

The Board of Supervisors in this case could not *legally* levy the tax asked by the relator, while the injunction in the State Court remained in force.

"A mandamus will not be granted to command an inferior tribunal, to do that which it could not *legally* do, without such mandate."

The State v. The Judge 15 Ala. Rep. 740.

Moses on Mand. 58

"Neither will it compel any officer, to do an act, which without its command it would not be lawful for him to do."

Johnson v. Lucas, 11 Humph. 105.

Moses on mandamus, Ibid.

"So although the Court, will by mandamus order that to be done, which ought to and may *lawfully* be done, yet it will not require that to be done, which may become the subject of *indictments* or public nuisance, nor that which is *illegal*."

Tapping on Mand. p. 68.

"Nor will the Court grant, it merely for the sake of a return against a person as an inferior ministerial officer *who obeys a power, which he is unable to resist.*"

"The Court has refused the writ in cases where it would have the effect of subjecting third parties, to penalties, under the Revenue law &c."

Ibid p. 69.

In. re. Lodge 2nd A & E, 123.

Lawrence v. Hooker, 5 Bing. p. 6.

In the case of the O. & I. R. R. company v. The Commissioners of Wyandot County, where the questions in this case were the questions presented and determined, the Court denied the writ, refusing to compel a party to do, what by a subsisting decree of injunction, he was prohibited from doing, although the party seeking the remedy by mandamus, was not a party to the decree of injunction."

Counsel for the relator, avoids the effect of the opinion in this case by drawing a distinction between the decrees of the Court refusing the writ and those of another tribunal.

The judgments of Court of concurrent jurisdiction, are as equally binding the one upon the other, as the judgments of each Court upon itself, entitled to full credit and effect as *judgments*, and in this case, conclusive in return to the alternative writ of mandamus.

In the case of Havemyer v. Iowa county, 3rd Wallace 264.

refered to by counsel for relator, this Court says, "that if the contract was valid by the Constitution and laws of the State, no subsequent action by the legislature or judiciary can impair its obligation." However true this may be, however ineffectual any act of the state judiciary in determining the questions, of

the validity of the bonds may be, yet it will not be assumed by any one, that while their decisions in similar cases cannot impair the *obligation* of the contract herein, yet a decree adversly to the relator unreversed upon the very subject matter of *this* suit would be binding, The questions, presented by the authority cited by relator are not in point.

In conclusion the Federal and State Courts have concurrent jurisdiction of the subject matter of this action.

The proceeding by mandamus is the commencement of a new action, and the jurisdiction of the Federal Court, dates only from the filing of the information the decree in the state Court was previously rendered and that Court which first acquires jurisdiction shall retain it throughout. The Board of Supervisors cannot obey the mandate of Federal Court, without incurring the penalty of the law. It is the province of the Federal Court in this case, to protect the defendants in error *against*, rather than expose them *to* the infliction of the penalty consequent upon a violation of the injunction in the State Court.

FAIRALL & BOAL,
For Defts. in Error.

DW 76, no 4

Supreme Court of United States.

UNITED STATES *ex-rel.* J. EDGAR THOMSON,
Plaintiff in Error,

vs.

BOARD OF SUPERVISORS OF HENRY COUNTY, IOWA,
Defendants in Error.

BRIEF AND ARGUMENT,

BY

H. SCOTT HOWELL, ATTORNEY FOR RELATOR.

ALSO SUBMITTED IN THE FOLLOWING CAUSES:

No. 246, U. S. *ex-rel.* MOSES, *vs.* CITY COUNCIL, KEOKUK, IOWA,

No. 247, U. S. *ex-rel.* THOMSON, *vs.* CITY COUNCIL, KEOKUK, IOWA,

KEOKUK, IOWA:
Rees' Book and Job Office Print.
1866.

SUPREME COURT

OF THE

UNITED STATES.

☞By an arrangement of Counsel representing the Relators in the cases, in the U. S. Supreme Court, No. .... State, ex-rel. Riggs *vs.* Supervisor Johnson county, and No. 245, State ex-rel. Thomson *vs.* Supervisor Henry county, the Briefs of both Attorneys are submitted in each case, the cases themselves being similar.

NOTE BENE.—No. 246, U. S. ex-rel Moses *vs.* Keokuk, Iowa, has been settled, and the bonds taken up by defendents.

In No 247, U. S. ex-rel. Thomson *vs.* City Council, Keokuk, the principles involved are precisely the same, as in U. S. ex-rel. Thomson *vs.* Supervisor Henry county, and the same character of defense relied upon, and it was not thought necessary to print a separate argument, although the facts are a little different.

SUPREME COURT

OF THE

UNITED STATES.

UNITED STATES *ex-rel.* J. EDGAR THOMSON, *Plaintiff in Error,*

vs.

BOARD SUPERVISORS, HENRY COUNTY, *Defendants in Error.*

NO. 245, DECEMBER TERM, 1866.

BRIEF AND ARGUMENT IN THE CAUSE

BY

H. SCOTT HOWELL, ATTORNEY FOR RELATOR.

THIS is a proceeding by mandamus, brought by the relator to compel the respondents to levy a tax to pay two certain judgments obtained by relator against Henry county, Iowa, in the Circuit Court of the United States, for Iowa, upon the coupons of certain Railroad bonds, issued by said county, in payment of her subscription to the capital stock of the Keokuk, Mount Pleasant & Muscatine Railroad Company.

The issue is joined by the demurrer of the relator, to answer or return of the respondents upon the alternative writ of

mandamus; and just one point is presented—one single answer given—why the peremptory writ should not issue; and that is, that the respondents have been enjoined by the State Court of Iowa from doing what relator seeks to have them perform.

I.

THE FACTS

Disclosed by the pleadings are, that the people of Henry county, Iowa, at a special election held for that purpose, on the first Monday of January, 1855, authorized the issue of one hundred thousand dollars, in the bonds of said county, and, at the same time, and by the same vote, authorized the levy and collection of an annual tax to pay the principal and interest of said bonds; that, under the general law of Iowa, and, by virtue of such authority, said bonds were afterwards issued, dated 1st of January, 1857, drawing eight per cent. annual interest, running twenty years, and all made payable to bearer; that relator bought a large number of said bonds and coupons, for value in the market, before their maturity, and after the Supreme Court of Iowa had determined the validity of same or similar bonds; that relator, at the October term, 1864, of the Circuit Court of the United States for Iowa, recovered two judgments upon past due coupons, which still remain unpaid; that due demand had been made by relator upon the Board of Supervisors of Henry county, upon whom such duty devolved by law to levy a tax to pay said judgments, which they, by a resolution of their Board, had refused to do; and, thereupon, relator instituted this proceeding to compel them to perform.

Respondents, in their answer, admit the election held—the issue of the bonds—that the judgments were obtained, which

remain unpaid, and the demand to levy the tax; but set up the fact that certain tax-payers of Henry county had filed a bill in the District Court of Henry County, Iowa, against respondents, enjoining them from levying a tax to pay any of said Railroad Bonds or Coupons, and that relator was also made a defendant in said suit; but for what purpose, or what relief was asked as against him on said bill, respondents' answer herein does not disclose.

It also appears that a preliminary injunction was allowed and endorsed upon said petition by a Judge of the Supreme Court of Iowa, sitting at chambers, the bill then filed in the District Court, the writ of injunction issued, which was duly served upon the respondents; but there is no allegation same was ever served upon the relator herein.

The petitions in each suit—one for mandamus in the Federal Court, and one for injunction in the State Court—were filed on the same day, the 20th January, 1865.

The relator demurred to the showing, as made by the respondents, because the facts stated therein were not sufficient in law to constitute a defense against the relief sought by the relator.

ARGUMENT AND AUTHORITIES.

In the outset, we contend that, although the name of J. Edgar Thomson appeared in the petition for the injunction, and perhaps, also in the writ, that he was never properly brought before the State Court, and its decree or order is in no way binding upon relator herein.

It is not alleged he was ever served with notice, or that he entered an appearance in said suit. Being a non-resident of

mandamus; and just one point is presented—one single answer given—why the peremptory writ should not issue; and that is, that the respondents have been enjoined by the State Court of Iowa from doing what relator seeks to have them perform.

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It is not alleged he was ever served with notice, or that he entered an appearance in said suit. Being a non-resident of

Iowa, as his status in the Federal judgments show, the presumption of law is, he could not have been, and was not served *personally* with notice.

An injunction suit, being strictly a personal action, he could not be served by publication, else one might be held and punished as for a contempt of an order of Court, of which he might not have had the slightest knowledge.

Service by publication is a matter purely statutory, and this is not one of the cases wherein it is allowed in Iowa, (see section 2,831, Revision of 1860). The only paragraph of that section in which the right of making such publication might possibly be considered as having been given, is number six, which reads thus:

"6. In actions which relate to, or the subject of which is real "or personal property in this State, when any defendant has or "claims to have a lien or interest, actual or contingent therein, "or the relief demanded consists wholly or partly in excluding "him from any interest therein, and such defendant is a non-"resident of the State or a foreign corporation."

But the "personal property" here spoken of must mean a specific property having identity; a thing *in esse*, goods, merchandise and the like; such property as usually requires the immediate care and supervision of the owner, or his agent, at the place where same is. It will also be noticed that it is the property of the *defendant*, or in which he has an interest. Now, under the laws of Iowa, a tax not levied, can, in no sense, be considered the property of a bondholder. It must be a tax *collected by the county* in which he would have such an interest. Till then it does not become the property of the county. While in the pocket of the tax-payer, it is his property, and his alone,

and cannot be "*levied upon.*" The bondholder must get at it in some other way. The last part of section 3,274, Revision of Iowa of 1860, all of which is quoted *post*, reads as follows:

"The property of a private citizen, *can in no case, be levied* "*upon* to pay the debt of a civil corporation."

But more: The statute requires all such personal property to be "in this State" (Iowa). But where is the evidence, or allegation, even, that either the bonds or bondholders in the case under consideration, were in the State of Iowa, much less within the limited jurisdiction of the District Court of Henry County?

Again: No relief appears to have been asked for as against the said Thomson. The Board of Supervisors were indeed "enjoined and commanded to desist altogether from levying, or "causing to be levied, any tax for the purpose of paying either "principal or interest of the coupons mentioned in the plain-"tiff's petition," and such was the nature of the bill. Hence, we submit the relator is, in no way, estopped or embarrassed in his present action by the injunction suit in the State Court, and we may argue this case as though he had not been made a party thereto. As he did not enter any appearance, was not served personally, and could not have been properly served by publication; and as said suit was not an action *in rem* the proceedings of the State Court do not estop the relator in the prosecution of any right, or in the pursuit of any remedy provided by law for the collection of his judgment in the Federal Court.

"Judgments bind only parties properly before the Court, and "their privies." Such has always been the law. Says Marshall, C. J., in *The Mary*, 9 Cranch, 144, "it is a principle of

"natural justice, of universal obligation, that before the right "of an individual be barred by a judicial sentence, he should "have notice, either expressed or implied, of the proceeding "against him."

II.

What, then, are the rights of the relator herein? what the proper and lawful mode of enforcing such rights, and who can intervene to stay their enforcement?

His FIRST right was a judgment against the county on the coupons. This the Circuit Court has determined by its judgment fixing and establishing the validity of the bonds, and no Court but this, appellate, Court can change it. Even the respondents, in their extraordinary petition for injunction, do not directly seek to cancel or reverse the relator's judgments in the Federal Court.

Now, this right of judgment is founded upon the contract of the county, made by her proper officers, to pay her bonds. What follows? In all ordinary cases an execution for the collection of the judgment. But such is not the process, or not the only process, when the instrument makes additional provision for another. Pre-eminently is this true in the present instance. Because the same statute which provides a writ of execution for the collection of a judgment against another defendant, by a levy upon his property, in case of a county in Iowa, exempts her public property from seizure and levy on executions.

Section 3,274, Revision of 1860, provides: "Public build- "ings owned by the State, or *any county*, city, school district, "or other civil corporation, and any other *public property* which

"is necessary and proper for carrying out the general purpose for "which any such corporation is organized, *are exempt from exe-* "*cution*. The property of a private citizen can, in no case, be "levied upon to pay the debt of a civil corporation."

Now, the "public buildings" and "other public property," embracing a poor house of a county, and taxes collected, constitute all, or the great bulk of the property of a county in Iowa.

But even if this were not so, if the "public property" could be "levied upon" and sold "on execution," that would constitute no reason for withholding the writ of mandamus. In *Commissioners of Knox County vs. Aspinwall*, 24 Howard, 383–4, the Court say: "Assuming that the general law of "Indiana permits the public property of the county to be levied "upon and sold for the ordinary indebtedness of the county, it is "clear the bonds and coupons issued under the special proceedings "of this act were not left to this uncertain and insufficient remedy. "This act provides a specific fund for the payment of these obli- "gations, on the faith and credit of which they were negotiated. "It is especially incorporated into the contracts that this corpora- "tion shall assess a tax for the special purpose of paying the in- "terest on these coupons. If the commissioners either neglect or "refuse to perform this plain duty imposed on them by law, the "*only remedy* which the injured party can have for such refusal "or neglect is the writ of mandamus."

Surely, then, the creditor of a county in Iowa must have some further right—some other mode of redress—some other remedy.

He has, and both that right, and the manner of enforcing same, is, we contend, also *a matter of contract*, found on the very instrument executed by the county upon which the judg-

ments were rendered. The people of Henry county, at the same election, and by the same vote which authorized the execution and issue of her Railroad Bonds, also voted to levy, or have the proper county authorities levy upon them, an annual tax to pay said bonds and interest. This contract is recited on the face and made a part of every bond the county issued, and thereon she also pledges the "good faith" of the people to see it performed.

The purchaser of such bonds does not have to depend merely upon the remedy as supplied by the general law of the land, as interpreted or administered by the Courts of the State at the time he buys, which may change with a change of the judiciary; *but he can, with these bonds in his hands, rely with unfaltering confidence, upon the contract they make—the validity of which no Court, Federal or State, can abrogate or impair.*

And just here is where we think the Judges of the Circuit Court failed to appreciate the case. They gave us judgments on the coupons, *ex-necessitate*, as of right; but they refuse us the writ of mandamus, forsooth that is an extraordinary "remedy," and the granting of it enjoined by a Court of concurrent jurisdiction! As well might the State Court attempt to cancel or or annul the judgments of the Federal Court. What has the judgment to support it but the contract of the parties to pay the bonds? And the same paper, as a part of the same transaction, contains the agreement to levy the tax.

This must have been the sole, or controlling consideration, inducing a purchaser to buy the bond as a thing of value. For it, he parts with, and for it the county receives, his money. And yet when, with his money in her coffers, and he with her "sol-

emn promises" in his hands, which the county not only fails to redeem, but dishonestly repudiates, the purchaser comes to any State Court, and asks redress, he is told he has no rights which they can, or are bound to, respect! He goes to the Federal Court, still seeking Justice in her Temple. Here he is entertained at first. The Court gives him a judgment on his bond, and he is encouraged. But, when he asks that that judgment may be made effective, in the very manner provided for in the bond; when he asks an adjudication of *his full rights of contract*, he is turned away with an empty cup, and the fruits of his expectation suddenly become the ashes of disappointment!

But authority is not wanting in Iowa Courts, for the refutation of such a position. In *State ex-rel. Clark, Dodge & Co., vs. City of Davenport*, 12 Iowa, 741, the Court having decided, in a similar case, that having given plaintiff a judgment, he was entitled to "the payment of his debt." Not only did the Court go through with the idle ceremony of doing a vain thing, but awarded him a writ of mandamus to make that judgment effective.

The opinion in this case (which represents a full bench) is prepared by the same Judge who all along, in the judicial decisions of that Court, has held that municipal bonds, issued for railroad purposes, to be invalid. So in *State ex-rel. Dox vs. County Judge of Johnson Co., et al.*, 12 Iowa, 237, at page 245, the same Judge, representing the same full bench, says: "While he "has never concurred in the view which sustains the power of the "counties to issue such bonds, yet he may be permitted to say, "in this connection, that, as long as the power is recognized and "upheld, he believes that public policy and good faith (and he "may as well have said *good law*) alike demand that the in- "debtedness should be properly and regularly met, *according to*

"*the terms and specifications of the contract.* So long as "the validity of the bonds is recognized, neither the agents of "the counties, nor the Courts should countenance any action or "proceeding which would tend to mitigate against the strict and "full legal rights of the holder."

The opinion not only upholds the right of mandamus which was awarded in the case, upon the ground that it was a duty required of the respondent incident to his office required by public policy, and the general law of the land; but, he adds: "Not "only so, *but, by the terms of the contract between the holders of the bonds and the county*, the faith of the county "was pledged *to the levy of a tax* to meet the accruing interest and finally to liquidate the entire indebtedness."

So, our deduction from what has been said, is, that the SECOND GREAT RIGHT *of the relator is, to have his judgment paid by the levy of a tax.*

It is co-equal and co-extensive with the first. So long "as the validity of the bonds is recognized," so long has he his right "to the levy of a tax," both under the statute law and his contract bonds.

It must be admitted whatever impairs the obligations of the contract, whether a statutory enactment or judicial decision, is not to be regarded as law. To deny the relator in this case, a writ of mandamas, takes away from him his only remedy to collect his debt, and necessarily impairs the obligation. Taney, C. J., in *Bronson vs. Kinsie*, 1 Howard, 311, says: "The "remedy is the part of the municipal law which protects the "right, and the obligation by which it enforces and maintains it." In *Curran vs. State of Arkansas*, 15 Howard, 319, Curtis,

J., says: "But it by no means follows, because a law affects "only the remedy, that it does not impair the obligation of the "contract. * * * And, if the law is so changed that the "means of legally enforcing this duty are materially impaired, "the obligation of contract no longer remains the same."

And so we can say, with equal reason, if judicial constructions of an unchanged law, are so changed as to withhold the only effective remedy, certainly the obligation is impaired.

III.

But we are here met with the argument, that the validity of the bonds is no longer recognized by the Courts of Iowa—that they have reversed their former decisions, and now hold said bonds to be null and void. Of course, while holding to this modern doctrine—the repudiation of "solemn contracts," supported by the pledge of "*good faith*" of the people, we would not expect the State Courts of Iowa to grant us a mandamus.

But, happily for the bondholders, this Court, in well considered cases, *Gelpke vs. City of Dubuque*, 1 Wallace, 175; *Meyer vs. City of Muscatine*, *ibid.*, 384, and *J. Edgar Thomson vs. Lee County*, at December term, 1865, does not subscribe to this, as being the *leges legum*. And if we can not depend on this Court of last resort for the annunciation of both a better law, and the enforcement of the same, then certainly *nusquam tuta fides*.

Already has this and the lower Federal Courts determined the bonds are valid, and given judgments upon them, both before and since the Supreme Court of Iowa, has decided differently.

Here we have had given us half of our rights, and as justice is not meted out by halves, the other half must follow, without which the former is nothing.

But "there is a conflict," and this is the great *in terrorum argumentum*. Yet, to present this—the fact that there is a conflict—a difference of opinion, between the State and Federal Courts, as a reason why justice should be withheld, is to ignobly shrink from the contest, and tamely to submit to wrong. The termination of the great rebellion informs us how the executive department of our nation considered such an issue—it remains to be seen how the judicial department will grapple with it.

If there can be no flank movement, if this question can not be decided without a direct opposition to the State Courts of Iowa, on the single ground that one Court holds said bonds to be valid, and the other invalid, then we say that, at least so far as suitors, entitled to sue in the Federal Courts are concerned, they must be protected in their vested rights, by the power of this Court and of the Government.

The question is an important one. Millions of treasure, and, a thing still more valuable, an underlying principle of right, depend upon the issue.

Are the bonds valid? is the question. For twelve years the Supreme Court of Iowa said, yes. For twelve years that Court uniformly gave judgments upon them, and awarded writs of mandamus in addition to the usual *fi. fa.* to enforce their collection. This gave them value in the money market of the East where there they were sold, and still are owned. But for the last four years, this same Court has held to a different ruling, and not content with withholding its aid to the purchaser, which

Wright J. said, the "contract" and "public policy" required should be given, now seeks to forestall and enjoin the acts of all other Courts in the premises.

On the other hand, the Federal Courts, both before and since the Supreme Court of Iowa has "changed front," affirm their validity. The United States Circuit gave relator his judgments long since the decision of *State ex-rel. Burlington & Missouri River Railroad vs. County of Wapello* was decided (in 1862).

Let respondents disguise it as they may, it is not a question of practice—the changing of a rule of construction—or the withholding of a "discretionary writ;" but, in fact, *it is the establishment of a civil right, and the enforcement of a specific contract between citizens of different States which is to be determined* here.

The right to have the tax levied, is to the right judgment as substance to shadow. Without this, the other is a vain thing—a mockery—for, practically, there is no other way the judgment can be collected. I anticipate the reply the respondents will make here, that there are many judgments which cannot be collected. And this is true, as where rights have been barred by the statute of limitations, where the defendants have become insolvent and other like causes; but all these involve the inability of the defendant to pay, or the laches of the plaintiff in collection. Here no such reason applies. The county pays not, not because of inability, but indisposition. As a municipal corporation, the county cannot be insolvent, at least, till the taxing power, vested in her officials, has been exhausted. No "statute of repose" cuts off plaintiff's cause of action.

IV.

In further replication to respondents' return, we say *the proceedings in the injunction suit constitute no bar to our right of mandamus, for want of jurisdiction by the State Court;* and, if we show this, then there cannot be said to exist a conflict between State and Federal Courts, for what the State Court had not before it, it could not have decided.

What was the real subject matter of the injunction suit, *but the validity of the bonds?* Never before had Henry County bonds been declared illegal, or any relief against them granted upon this ground. It is true as a sequel of this ruling, the Court enjoined the collection of the money to pay them, but the predicate of such ruling was solely the then adjudicated invalidity of the bonds.

But where were the bonds? Before the Court, or within its jurisdiction? Not one of them. There is no pretense that the parties enjoined—the Board of Supervisors—held any of them. Had the defense of the invalidity of the bonds been successfully made in the Federal Court, where the bonds and coupons were produced and filed, then it would have been *res adjudicata on the subject matter.* But there, although such a plea was put in, the defendants failed.

Would any respectable Court undertake to cancel, by its decree, a promissory note or written contract, without having the instrument, with its owner or holder before the Court? Or, if the subject matter of the suit was there, without its owner, could the Court frame a decree to destroy it, which should be

good against all the world? Who ever heard of such a suit as John Smith *vs.* a promissory note, or John Dox *vs.* a Henry County Railroad Bond?

If A sues B upon a promissory note, and B defends upon the ground that the note was void, because fraudulently obtained, the note itself constitutes the subject matter of the suit, and must be brought into Court. Without its production, A could not recover, even though the defense set up fails. Both the note, the maker and the holder must be before the Court, to secure its adjudication.

Nor, is the subject matter different, or the rule of law changed, if the parties are reversed? If, instead of a suit at law by A, upon the note, B brings an action in chancery to cancel the note upon the same ground of fraud, he must bring the party holding or owning the note before the Court; and, in doing this, he would give the Court jurisdiction of the subject matter, also, in the person of the holder. But, in the case under consideration, it is not shown that a single bondholder was made a party to the injunction suit, who was ever served with notice; while, if this Court could see the petition in said injunction suit, they would find it stated "the owners of a large number of said bonds were to petitioners unknown."

In the case cited above, where B brought his action to cancel the note, suppose he had only made a third party—an entire stranger to the note, and the transactions out of which the note grew—a defendant to the bill, would a decree rendered on that case bar A, the original payee, or his assigns, from a recovery on same? Certainly not, and that because of the familiar principle that he was not a party or a privy to the defendant in the bill. And, although the plaintiff may have produced his

proof, and satisfied the Court that the note was wrongfully obtained from him, through fraudulent means or without due consideration, could it be said that the *subject matter* was properly before the court, so as to estop others, without the party who owned or held the note was made a defendant to the bill? And again, we ask, could it be said that the manner of the collection of the note was the subject matter of the suit? whether or not an execution should be issued against the maker, was the question in the case? No, no! Back of all these was the foundation matter—the real question upon which all sequent things depended—and that was, the validity or invalidity of the note. The right of an execution, and the right of a judgment itself, hung upon this.

Consider the case at bar. Here we have certain parties not even the makers of the obligations, but those having an infinitesimal interest in resisting their payment, bringing their suit *against the makers of the bonds* and her agents, to relieve them from the payment of a hundred thousand of dollars of negotiable, negotiated and unmatured paper; and upon such a case we are asked to conclude the rights of the holders of that paper! Anomalous suit!

We read in the books, of suits being brought by a "next friend" *of the plaintiff*, but, here in this *norus petitio*, the plaintiff is the "next friend" *of the defendant*, to whose friendly antagonism the defendant should certainly be very much obliged. Any repudiating creditor, individual or municipal, might well court *such* litigation at the hands of such "friends" who pay their own counsel fees! Self-interest leads alike, plaintiff and defendant, to a common end. Both are residents of Henry County, and, perchance, tax-payers, and to the prayer of the one, the other responds with a prompt Amen! Shall such adjudication be upheld?

We hold that every court, in every state, must have a corpus, the body of a person or a thing, one or both to be affected by its solemn adjudication brought within its jurisdiction (see *Freeman vs. Howe*, 24 Howard, 454; *Taylor et al. Corryl*, 20 Howard, 599,) to make its judgment effective.

No judge will turn schoolmaster to instruct a jury upon abstract propositions of law, but will refuse all such instructions asked by counsel. So no court should pass upon the properties, nature or incidents of an instrument, unless that instrument, or the parties holding it, are brought into court.

Authorities are numerous, that a court must have acquired jurisdiction over *both* the subject matter and the parties to be affected, before its judgment will be considered law. Without this, there is no estopel.

In *Judah vs. Stephenson*, 10 Iowa, 493, Lowe, C. J., in passing upon the validity of a transcript of a judgment of a court in Indiana, which was commenced by attachment, which transcript failed to show, clearly and affirmatively, personal service upon the defendant, or that any property was attached, although the usual publication in a newspaper was made, says:

"It follows that the court having obtained no jurisdiction "by personal service, or by attaching property, *that the pro-* "*ceeding was a nullity*," and he very properly excluded the record on that ground.

In *Shelly vs. Bacon*, 10 Howard, at page 69, the court say, that "A plea to the jurisdiction, to be effectual, must show that "the court had jurisdiction of the whole matter." And at page 68, "There is no principle better settled than that where two or "more tribunals have concurrent jurisdiction over the *same sub-* "*ject matter and the parties*, a suit commenced in any of

"them may be pleaded in abatement to an action for the same "cause in another."

It was held in *Bowers vs. the Irish Presbyterian Congregation*, 6 Bosworth, 245, a case just in point, that "The "court must have jurisdiction of both the persons, the parties "and the subject matter of the litigation, before it render a "binding judgment or decree."

Of the same tenor, are—

Stearns vs. Stearns, 16 Massachusetts, 171;
Bissell vs. Brigs, 9 Massachusetts, 462;
Smith vs. McIver, 9 Wheaton, 532;
State vs. Yarborough, 1 Hawks, 78;
Hall vs. Davies, 2 Aiken 381;

And it is the privilege and duty of the Federal Courts to determine the question of jurisdiction for themselves, and not to ask the State Courts when this exists, or when it shall terminate. In *Freeman vs. Howe*, 24 Howard, at page 459, which overrules (*Dunn vs. Clark*, 8 Peters, 1). We find it said: "We regard the question as settled, at least as early as 5. "*Cranch*, 115; *United States vs. Peters*, familiarly known as "the Olmstead case, and which is historical, that it belongs to "the Federal Courts to determine the question of their own "jurisdiction, the ultimate arbiter, the supreme judicial tribu- "nal of the nation, and which has been recently reaffirmed, "after the most careful and deliberate consideration, in the "opinion of the present Chief Justice, in the case of the *United* "*States vs. Booth*, 21. Howard, 506."

V.

If our view of the case, that the subject matter of the injunction suit was really the validity of the Henry County Bonds be

correct, it would seem a work of superaddition to go beyond it. But if the view of the respondents' counsel, that the subject matter of said suit was the levy of the tax to pay them is to be entertained—and if this court shall take the simple allegations of the respondents' answer, that relator was a party defendant to said bill, without a showing that he appeared, or was served or could have been served by publication, as sufficient evidence that relator was duly brought before said State Court—then it will be proper to inquire further, how far the proceedings therein taken would affect his right of mandamus in this.

In the FIRST place, it seems to us there is a defect in the answer, which is fatal to it, in that it does not disclose any action *of a Court.* It will be noted that, all that had been done in the injunction suit, when the defendants made their return, was the allowance of a preliminary injunction, by a Judge of the Supreme Bench—filing of the petition in the District Court of Henry County—the issuing of the writ of injunction, by the Clerk, and its service upon the respondents. No judgment of the District Court is pleaded, because, for aught that appears, none was ever had. No Judge of the Supreme Court of Iowa, nor that Court itself, has any original jurisdiction. And the allowance of the preliminary injunction, by the Chief Justice, sitting at chambers, which he had the right to do, amounted to simply nothing, until the petition had been *filed* in the lower (District) Court, the bond given, and a notice and writ issued. As a matter of fact, relator does not know what kind of a final decree, if any, has ever been rendered. But, it is fair to presume the petitioners got all they asked, and, if this be so, respondents possibly might be permitted to set up, by an amended return, the record of the same, and thus only delay the decision which it is so important should be rendered herein, at an early day;

and, we pass to further considerations arising under this view of the case :

SECOND—It is admitted, where two Courts have concurrent power, that, that Court which first acquires jurisdiction over the parties and subject matter, determines the rights of the litigants, and the other Court must withhold action in the premises.

Applying this elementary principle, we claim the Federal Court first obtained that jurisdiction, by reason of the judgments rendered therein, in favor of relator, which were long prior to the institution of the injunction suit : and that these constitute the basis of his right of a mandamus in said Court. But Miller, J, in another case—*State ex-rel. Riggs vs. Johnson County*—now pending in this Court, used this language : "If it is the duty of the County Supervisors to levy the tax to "pay these coupons ; that duty can be enforced by mandamus, "before judgment, as well as after" (see printed opinion, with argument of respondents in this case, p. 28).

This, we think, is erroneous. A State Court, of general jurisdiction, might award a writ of mandamus before a judgment on such bonds, and, in some few cases, have afforded such a remedy :

Commonwealth vs. Pittsburg, 34. Penn. St., 496 ;

Maddox vs. Graham, 2. Metcalf, 56 ;

The People ex-rel. Belden vs. The Contracting Board, 27. New York, 378.

But we do not know of a case where a Federal Court has exercised such a power in the first instance, and before judgment. Neither Miller, J. or counsel for respondents, cite any.

The powers of the Circuit Court of the United States, to issue

a writ of mandamus, is derived from the 14. Section, Act of 1789, which reads: "That all the before-mentioned Courts of the "United States shall have power to issue writs of *seire facias*, "*habeas corpus*, and *other writs*, not specially provided for "by statute, *which may be necessary for the execution of* "*their respective jurisdictions*, and agreeable to the princi- "ples and usages of law."

The Supreme Court of the United States, in *McIntyre vs. Wood*, 7. Cranch, 504, say: "That the power of the Circuit "Courts of the United States, to issue a writ of mandamus, "is confined exclusively to those cases in which it may be neces- "sary to the exercise of their jurisdiction."

Herein, then, consists a reason why the jurisdiction of the Circuit Court, to grant a mandamus, should date back to the judgment. As the judgment must precede it, as it follows, when does it begin, if not at the rendition of the judgment? Certain it is, that the right to the writ of mandamus is inchoate, when it becomes "necessary for the exercise of the jurisdiction "of the Court."

In the parallel case of *Knox County vs. Aspinwall*, 24. Howard, 376, the Court say: "The jurisdiction is not disputed, "and it is necessary to an efficient exercise of this jurisdiction "that the Court have authority to compel the exercise of a muni- "cipal duty by the corporation, which, by law, they are bound to "perform, and by the performing of which, alone, the plaintiff's "remedy may be effected."

In *Wayman vs. Southard*, 10. Wheaton, 1, it was held: "The jurisdiction of a Court is not exhausted by the rendition of "its judgment, but continues till that judgment shall be satisfied." If it "*continues*," from what time, if not from the date of the

judgment, and until paid? Note, particularly, that "it con-"tinues," after judgment, till satisfaction, as fully as before judgment from the date of the summons. It is not a dormant jurisdiction after judgment, nor does it need a new birth to give it efficacy and power. "It *continues.*"

Again, in the *United States Bank vs. Halstead*, 10. Wheaton, 64, Thompson, J. says: "The suit does not terminate with "the judgment, and all proceedings, on execution, are proceed-"ings in the suit." If "all proceedings on execution," as the interrogation of the judgment debtor, by the sheriff holding said writ, the attachment of his property by garnishment in the hands of others, which are allowed by the laws and practice of many of the States, "are proceedings in the suit," all tending to the same end, the recovery of the debt, then, certainly a writ of mandamus is also a proper proceeding and remedy under the original judgment. It is, indeed, the real and only execution—the *modus operandi* in the enforcement of the payment of the debt.

The Aspinwall case, in Indiana, warrants this view, and establishes the principle, that, in a proper case made, a writ of mandamus as necessarily issues, as that an ordinary *fi. fa.* does upon a judgment against an individual.

But, we are told, it requires something more to get out a writ of mandamus than an execution — that to obtain a mandamus a petition must be filed, etc.—so we file a precipe for an execution. The length and form may be different, but each is a statement of his judgment, and a prayer, or request, of the plaintiff, for the executive process of the Court to issue, for the enforcement of his judgment *previously obtained.*

Respondents' counsel, in their printed argument in this case,

page 15, claim that "a mandamus is not a writ of right, but "may be granted, or refused, in the discretion of the Court, to "which the application is made," and, citing some very ancient authorities, add: "We think there is no case to be found "wherein it has been held that a writ of mandamus *is* a writ "of right, or, that the granting or refusing it is not a mat- "ter resting exclusively within the discretion of the Court to "which the application is made."

Such is not the law now even in England, and we need cite but one or two authorities among the many in this country to contradict it.

Commonwealth of Kentucky vs. Dennison, 24 Howard, 97, the Court say: "It is equally well settled that a mandamus "in modern practice, is nothing more than an action in law, "between the parties, and is not now regarded a prerogative "writ. It undoubtedly came into use by virtue of the preroga- "tive power of the English Crown, and was subject to rules and "regulations, which have long since been disused. But the right "to the writ, and the power to use it, has ceased to depend upon "any prerogative powers, and is now regarded as an ordinary "process in cases to which it is applicable."

In *Kendall vs. Stokes*, 3 Howard, 100, the Court say a writ, of mandamus, is "nothing more than the ordinary process of a "Court of justice, to which every one is entitled when it is the "appropriate process for asserting the right which he claims."

There are but two writs, or processes, provided in law, for the enforcement of a money judgment, execution and mandamus. We have seen that an execution in this suit would be utterly unavailing, and as this Court has decided in a similar case that the bondholders of the county are "not left to the uncertain and in-

"sufficient remedy," of execution against the "public property "of the county," though that was not exempt from levy, when the bonds as in this case, "provides a special fund for their pay-"ment," *we submit that the relator is shut up to his "only "remedy," the collection of his debt by mandamus.* Take this from him, and what has he left? Deny him this, and what does he receive instead? Nothing.

That this Court has the power, to issue the writ of mandamus, is conceded. The case is made out. The parties and subject matter within its jurisdiction. Shall its "ordinary process," in this proper case be stayed, and its authority defied, and the respondents find protection under the preliminary injunction ordered by a Judge of the State Court, upon a less than *ex parte* case?

If we grant the proposition that such a case could be made out which, by comity of the Federal Courts, would lead them to respect, yet would we not yield the point, without first examining the grounds, moving the State Court, to take the action. Then why did the State Court enjoin the levy of the tax on this case? Simply because the bonds *by them were held to be void?* But this the Federal Court denies, and by its judgment solemnly adjudges to be erroneous. What then of comity in such a case? To yield here is to surrender a principle which the Federal Court had the superior right to, and did, establish by reason of her prior jurisdiction. To yield here is to admit that the State Court can abrogate the judgments of the Federal Court, whenever in the opinion of the former, they have been erroneously entered.

That this can not be done, and that the Federal Courts will not allow the State Courts to enjoin their process, has been held by—

Hyde vs. Stone, 20 Howard, 175;
McKim vs. Voorhies, 7 Cranch, 279;
Wyman vs. Southard, 10 Wheaton, 1;
McClunge vs. Silliman, 6 Wheaton, 598;
Knox County vs. Aspinwall, 24 Howard, 376;

and other cases with which this Court are familiar.

In the first case, *Hyde vs. Stone*, the Court say: "But this "Court has repeatedly decided that the jurisdiction of the Courts "of the United States over controversies between citizens of "different States, cannot be impaired by the laws of the States, "which prescribe the modes of redress in their Courts, or which "regulate the distribution of their judicial power. In many "cases State laws form a rule of decision for the Courts of the "United States, and the forms of proceeding in those Courts "have been assimilated to those States, either by legislative en- "actment, or by their own rules. But the Courts of the United "States are bound to proceed to judgment and to afford redress "to suitors, before them, in every case to which their jurisdic- "tion extends. They cannot abdicate their authority or duty in "any case in favor of another jurisdiction."

Snydam vs. Broadnax, 14 Peters, 67;
Union Bank vs. Jolly, 18 Howard, 503.

In both *Sturgis vs. Crowninshield*, 4 Wheaton, 122, and *Ogden vs. Saunders*, 12 Wheaton, 213, "the obligation of a "contract" is defined to be "the law which binds the parties to "perform their agreement." And in the latter case, Washington, J., says: "The law then, which has this binding obligation, "must govern and control the contract in every shape, in which "it is intended to bear upon it, whether it affects its validity, "construction or discharge."

In this case it was held that both the General Government and the States had the power to pass insolvent or bankrupt laws, and to discharge debtors by their complying with the requirements of the acts. And Johnson, J., in his opinion, Marshall, C. J., with Duval and Story assenting, says that "the fair and ordinary "exercise of that power by the States, does not necessa- "rily involve a violation of the obligation of contracts *multo* "*fortiori*, of posterior contracts. But when, in the exercise "of that power, the States pass beyond their own limits and "the rights of their own citizens, and act upon the rights of "citizens of other States, there arrises a conflict of sovereign "power, and a collision with the judicial powers granted to the "United States, which renders the exercise of such a power "incompatible, with the rights of other States, and with the "Constitution of the United States."

If such language may be used towards the law-making department of the State, certainly it would apply with equal force to the judicial branch of the States.

"But there is a conflict," we are told. So is there a conflict in every suit tried in a Court, and the theory of the law is, that the *right* prevails in the conflict. Will this Honorable Court, to which we are accustomed to look up, as the great fountain of justice and wisdom, be satisfied with less than that which is given to a guilty culprit in a State tribunal? Again, we are told "it is inexpedient," and we reply, in the words of another, "it is always expedient to do right." But we may be further told that right and wrong are relative terms, and different tribunals must determine these for themselves. Grant it so. Then let the State Court be content with retaining what it has, with exercising a jurisdiction over parties who come, or are properly brought before it. Do respondents reply, the supervi-

sors, were properly before that Court, and duly served. So they were, and so far as plaintiffs in that suit are concerned, they seeking to collect any of said bonds, would be estopped. The respondents could plead the judgment against them. But if another person, not a party to said suit, one who had vested rights, who owned bonds not derived through the said plaintiffs, and in no way privy to them, comes to this, another tribunal, seeking redress, he may not be concluded by such a suit.

It will hardly be contended that the District Court of Henry county, Iowa, could pronounce a general decree of outlawry against the bonds themselves, and that too in an action *in personam!* To undertake this would be as futile and harmless as the Pope's bull against the comet.

But still "there is a conflict" between the Courts, and one must give way. The wisdom and learning of the Supreme Court of the United States is presumed to be, at least, equal to that of any other Court in the land. Its decisions upon the validity of these railroad bonds have been uniform, running through a great number of years, and in the consideration of a great number of cases. The Judges of this Court hold their offices for life. On the other hand, the office of Judgeship in Iowa, is elective, and the incumbent sits for only a few years. It has only been sixteen years since the first decision was made in Iowa upon a railroad bond, and for twelve years of that time all the Courts of the State upheld the validity of the bonds. About four years ago, and *since the office has become elective*, the Supreme Court of that State has made a change, and overruled all its former adjudications on this question. The office is still elective, and may we not expect, after a monition from this Court, that if the present incumbents do not, their successors in office will

make a second change, and return to the better law of the earlier Judges?

But "still there is a conflict," and if this Court awards a mandamus, these respondents "will be placed between two fires," and the inquiry is how can they be extricated. Technically, the injunction does not restrain respondents from levying a tax to pay relators' judgments, but only "from levying or causing to "be levied any tax for the purpose of paying either the principal "or interest of the coupons, mentioned in the plaintiffs' peti- "tion." And when we remember that every creditor of a municipal corporation in Iowa, *after he has obtained a judgment on his debt*, has a right given him by a statute (which has been in force fifteen years) to have that judgment paid *by the levy of a tax*, (provided the corporation debtor issues no scrip,) we think it can well be said, *the District Court of Henry county did not intend by its injunction to stay the collection of relators' judgments.*

Section 3,275, Revision 1860, found in a chapter on executions, reads as follows: "In case no property is found on which "to levy, which is not exempted by the last section, or if the "judgment creditor elect not to issue execution against such a "corporation, he is entitled to the amount of his judgment and "costs in the ordinary evidences of indebtedness, issued by that "corporation. And if the debtor corporation issues no scrip or "evidence of debt, *a tax must be levied*, as early as practicable, "sufficient to pay off the judgment with interest and costs."

In two recent cases in the Supreme Court of Iowa, *Coy vs. City of Lyons*, 17 Iowa, 1, and *Clark, Dodge & Co. vs. City of Davenport*, 14 Iowa, 494, it has been held that the *creditor* has the right to elect whether he will take scrip or

ment of a State Court was expressly inhibited by the same statute above cited. He also confesses the judgment of the Federal Court should not be regarded when it had not jurisdiction of the subject matter, and yet he did defer to it, in the very face of the statute, which negated that Court's power to grant such a writ.

In *Freeman vs. Howe*, 24 Howard, 459, the Court say: "No doubt if the Federal Court had no jurisdiction of the case "the process would be invalid, and the seizure of the property "illegal, for which the aggrieved party is entitled to his remedy."

Suppose then the Federal Court had undertaken to fine a party for the violation of some city ordinance, or that some Justice of the Peace had attempted to grant a divorce, in each of which cases the defendants had been duly served with notice, and the record of these cases had been offered in evidence in some controversy properly pending before Judge Cowan, involving said matters; how would or should he have regarded the same? How? but as the Supreme Court of Iowa did, in *Judah vs. Stephenson*, 10 Iowa, 493, as "a nullity."

The only explanation which can reconcile his action in the consideration of the statute and case referred to, would seem to be, that when the word "Court," was used there, it did not mean, or embrace, the word "Judge." But if such a distinction as this is to be recognized, certainly the difference between an injunction to stay the levy of a tax to pay railroad bonds, and one to stay the collection of a judgment against a county which issued them, should also be acknowledged.

As to the other case, *Ohio and Indiana Railroad Co. vs. Wyandotte County*, 7 O. S. R., 278, we have to say, it is unlike

the one we are considering, in that it was the *first* suit brought by the relator, as an original remedy, and the injunction forbid *verbatim et literatim*, the thing asked for by the mandamus. The decree is rendered by only three of the five Judges, and the reasoning used by the Court in that case is, to say the least, peculiar. Both the decree of injunction, and the proceedings for mandamus were in the same Court, the injunction having precedence of date, and the *relators not having been made parties to it.*

The Court say as the Railroad Company were not made parties to the injunction suit, that the "*decree does not therefore "bind, or conclude, the Company by any of its findings.*" And, notwithstanding the Railroad Company was the beneficiary, and entitled to receive the stock, yet the Court excluded the said Company from their right to receive the stock; and even refused them the privilege of testing, or inquiring into the validity of the decree, which operated to keep them from obtaining the stock; and this, too, upon the ground that to allow the said Company to do it, would be "such inconsistency" as to be "wholly inadmissable."

But it has been contended that a mandamus is a new action, requiring new parties, and cannot be considered a continuation of the original suit on the coupons, so as to ante-date the jurisdiction of the Federal Court, to the time when the said suit at law was commenced.

We think this position is not well taken. It is admitted the Federal Court *can* issue writs of mandamus, and we have shown that in all such cases it must appear to be for the enforcement of some prior adjudicated right, or the rightful exercise of the

demand a levy of a tax to be made. Thus construed, the proviso is no limitation on the power, and whatever may be said against the granting of a mandamus to levy a tax, to pay the principal or interest of coupons, the right of a judgment creditor of a county in Iowa, to have "a tax levied as early as practicable, sufficient to "pay off the (his) judgment, with interest and cost," *is absolute and statutory.*

Again, the statute of Iowa, adopted by the rule of the Circuit Court, in chapter on mandamus, section 3,770, Revision 1860, as if in contemplation of the present state of affairs, provides that the Court may direct the act, which the respondents should have performed, "to be done by the plaintiff himself, or some other "person, appointed by the Court." And aside from all this, the law is clear, that where the Court has the right and power, to enforce the levy of the tax, it will not be confined in its choice of the means or medium, to an unwilling and insufficient executioner.

We say then, to these timid, fire-bound respondents, *quid times.* The highest Court of the land (6 Wheaton, 598,) has decided "it is not bound to encounter phantoms."

VI.

The respondents, in connection with this plea of the conflict of Courts, produce just two authorities: *Ex parte Fleming*, 4 Hill, 581; and *Ohio and Indiana Railroad Company vs. Wyandotte County*, 7 Ohio State, R. 278.

In review of the first case named, we say it is the decision of no Court, but only the opinion of a single Judge of a Court of subordinate jurisdiction, sitting at chambers. He (Cowen, J.)

is the same Judge who declared a "mandamus was a prerogative "writ," which he had the power to issue, or withhold, at his pleasure; and to his imagination we are indebted for first placing the respondents in position for a double judicial enfilading.

But the case is not parallel to the one at bar. A proceeding by several creditors in aid of execution was pending before a county Court, to compel a judgment debtor to pay their claims against him, or go to jail. A sentence of commitment had been announced, when the debtor obtained a writ of injunction from the Federal Court, to prevent its execution and to stay the mittimus. The next movement was by Fleming, one of the prosecuting creditors, making an application to Judge Cowen, of the Supreme Court of New York, for a writ of mandamus to compel the county Judge to issue the warrant to commit the debtor, when the county Judge pleaded the injunction proceedings against its allowance.

The case is dissimilar, because all the proper parties were before the Federal Court. We say all, because the law of the United States, section 5, act of March 2, 1793, 1 Statute at Large, 334, requires notice to be given to the opposite parties *in all cases* brought in the Federal Court for injunction; and we may presume this was done, before that Court awarded the writ. Besides it was directed to the chief defendant by name.

Again, good law is the science of reason; but we look in vain for sound reasoning in this case. To say the most, it was all judicial comity—deference to the Federal Court—when the Judge not only confessed "that it was certainly impossible for me "(him) in the case stated to see expressly that the injunction "was properly issued," when he must have known that the granting of an injunction by a Federal Court to stay the judg-

jurisdiction of the Court; and it matters not that new parties are necessary, and a different process employed.

Even where this was the case, and the further difficulty was presented in the Federal Courts that both parties, plaintiffs and defendants, were citizens of the same State; yet, in several cases, this Court has not hesitated to declare such suits "ancillary and "supplemental to the original suit." In 24 Howard, at page 460, we read: "The principle is that a bill filed on the equity side "of the Court, to restrain or regulate judgments or suits at law "in the same Court, and thereby prevent injustice, or inequitable "advantage under mesne or final process, is not an original suit, "but ancillary and dependant, supplementary merely to the "original suit, out of which it had arisen, and is maintained "without reference to the citizenship, or residence of the parties."

In *Minnesota Company vs. St. Paul Company*, 2 Wallace, 632, the Court say: "The present suit is really a continuation "of that one." The former suit referred to was an action of foreclosure against the La Crosse and Milwaukee Railroad Co. The "present suit" spoken of was by a different plaintiff against different defendants, for a different object; but yet, being connected with the same subject matter, about the same railroad, and the mortgaged property of the same, the Court overruled the plea to the jurisdiction, holding the "present bill necessary in order "to have a declaration of what was intended by the order and "decree made in that (former) suit, *and to enforce the rights "which were established by it.*"

The first was an ordinary action foreclosing a mortgage; the latter an action to quiet title, for the statement of an account, to recover a compensation in damages, for an injunction, the appointment of a receiver, and general relief; but all having

reference to "the road and rolling stock," of said Railroad Company, which, the Court declares, was "*the subject matter of the controversy;*" and, therefore, entertained jurisdiction, and would doubtless have maintained that jurisdiction against assumptions of any State Court.

We are told, further, that the "respondents are new parties," and that, therefore, this suit of mandamus is a "is a new suit," and not a continuation of the old one. But who are the Board of Supervisors, save the agents and immediate representatives of Henry county, the original defendant? They are the visible body of the invisible corporation, and we seek no action from them, save as the agents of the county. In the case last cited above, Pratt and White, who bought the railroad at the Marshal's sale, and held the title thereto, were citizens of the same State with the plaintiff, and this matter was set up to divest the Federal Court of its jurisdiction, as undoubtedly it would, had the last suit been considered a new suit: but the Court refused to entertain the plea, saying: "If the Court has jurisdiction of the matters "growing out of that sale, and order of possession, as we have "already shown that it has, then it has jurisdiction to that extent "of these parties without regard to their citizenship."

In both *Maddox vs. Graham*, 2 Metcalf, 56, and *Louisville vs. Kean*, 18 B. Monroe, 9, it was held that a suit by mandamus, to compel a corporation to do an act, was virtually a suit against a corporation itself. The county of Henry is still the real defendant and debtor; the respondents, but the exponent, or hand of the corporation, which we seek to have this Court move to her treasury for our relief.

See, also—

Blossom vs. Milwaukee & C. R. R. Co., 1 Wallace, 635;
De la Plaine vs. Lawrence, 10 Paige, 602.

We are aware that this Court will follow the decisions, and even the changes, of the State Courts upon "any principle of law "establishing a rule of *real property;*" but, if we look into these decisions, we will find very obvious reasons existing therefor, which do not apply in cases like the one under consideration.

Real estate is permanent property, and where *it* constitutes the subject matter of a suit, is always within the jurisdiction of the State Courts. States have the exclusive right to regulate its sale, transfer and descent, and the Legislature of States may change them at will. All this is but making, or changing, a "rule of property," which the Courts, State and Federal, will recognize. But when a negotiable instrument is made by an individual, or corporation, in due form of law — when it passes from the maker for a consideration, to the commercial world — it goes charged with no strictures of statute, with no limitations upon it but those of the common law of the land, founded upon common justice. All real estate has a written history. Its title, good or bad, is a matter of record—one buying, or loaning money upon it, can know, and is bound to know, what he gets. To determine the character of that title he must, of necessity, know the requirements of the statute, and the interpretation of the Courts upon all subjects affecting it; but all this is prepared for him in State laws, and decisions of State Courts, and ignorance here is culpable and fatal.

Not so with negotiable paper. This is made to pass from hand to hand, both in and out of the State, the world over. Particularly is this the case with a railroad bond, which is made to sell in the money marts of this and the old world. A purchaser examines it, and sees on the face a contract to pay back, on time, with interest, what the maker says, has been received. He buys it in New York or London, his rights become vested, and any

and every law, or decision, which destroys or affects those rights to his detriment, impairs the obligation of the contract, and is to be held for naught. Numerous decisions establish the law that the purchaser need not go back of the recitals on their face, to prove the regularity of the proceedings upon which the bonds were issued.

In conclusion, we say there are but just two ways of squarely avoiding the payment of these obligations. The first is to obtain the return of *nulla bona*, on a *fi. fa.* While the second is, *open repudiation of the contracts.* Respondents. and Henry county, have chosen the latter. Does this course commend them to the grace of this Court?

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